

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-2132

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT COURT

CARMINE GALANTE,

Petitioner-Appellant,

- against -

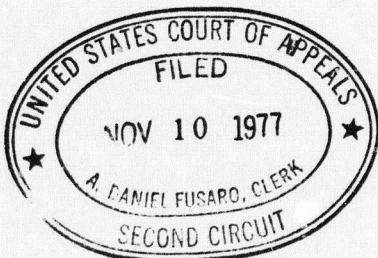
THE WARDEN, METROPOLITAN CORRECTIONAL CENTER, and THE
UNITED STATES PAROLE COMMISSION,

Respondents-Appellees.

ON APPEAL FROM AN ORDER OF THE UNITED
STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

SAXE, BACON & BOLAN, P.C.
Attorneys for Appellant
39 East 68th Street
New York, New York 10021
(212) 472-1400



PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

1A

DISTRICT OFFICE	DOCKET		FILING DATE		J	N/S	O	R	R	S	DEMAND OTHER	JUDGE NUMBER	JURY DEAL	DOCKET	
	YR.	NUMBER	MO.	DAY YEAR										YR.	NUMBER
208-1	77	4931	10	7	1	530	1					0859		77	4931

PLAINTIFFS

DEFENDANTS

GALANTE, CARMINE

WARD, J.

THE WARDEN, MANHATTAN CORRECTIONAL
CENTER, and
THE UNITED STATES PAROLE COMMISSION,

CAUSE

DNR

Petitioner is presently held under the authority of the U.S. Parole Commission for alleged violation of the terms & conditions of his parole. Petitioner seeks to be released on bail pending final determination.

ATTORNEYS

Saxe, Bacon & Bolan. P.C.
39 East 68th Street
New York, N.Y. 10021
472-1400

☐ CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
	OCT 11 1977	40401		JS-5	Y
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UNITED STATES DISTRICT COURT DOCKET

DC-111 (Rev. 1/75)

DOCKET ENTRIES

Carmino Galante vs. The Warden Manhattan Correctional Center Rt. App.

77 Civ. 4031

2A-1

DATE	NR.	Page 2	Ward, J.
10-11-77	1.	Filed Petition for writ of habeas corpus.	
10-11-77	2.	Filed Petitioner's order to show cause for writ of habeas corpus ret: 10-14-77 at 2:00P.M. in room 35.	
10-11-77	3.	Filed Petitioner's memorandum of law in support of application for bail.	
10-12-77	4.	Filed Deft's Affidavit.	
10-14-77	5.	Filed Petitioner's affidavit in reply to respondents' opposing papers and in further support of this application.	
10-19-77	6.	Filed Deft. Affidavit .	
10-26-77	7.	Filed Petitioner Affidavit in response to the affidavit of J.A. Nardoza & in futher support of the writ seeking bail for petitioner pending the revocation proceedings.	
10-27-77	8.	Filed respondents Affidavit in opposition to Petitioner's application for bail pending the outcome of the parole revocation proceedings which have been instityted against him.	
10-28-77	9.	Filed Memo-end on the back of document # 2... Writ denied & petition dismissed in accordance with decision rendered in open court. Inasmuch as the court believes that this petition poses a question of law upon which the Court of appeals should rule, the court will issue a Certificate of Probable cause...So ordered...Ward, J. mn	
10-28-77	10.	Filed Petitioner Notce of Appeal to the U.S.C.A. 2nd circuit for the memorandum endorsed or order of the Hon. Judge Ward which order was made on the 27th day of Oct. 1977 & ent. 10-28-77.	

APR 10 1978
 MANHATTAN CORRECTIONAL CENTER, CLERK

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[Signature]

D 216N

Carmin Galante v. The Warden,
Manhattan Correctional Center, and The
United States Parole Commission
77 Civ. 4931

Writ denied and petition dismissed in accordance
with decision rendered in open Court.

Inasmuch as the Court believes that this petition
poses a question of law upon which the Court of Appeals should
rule, the Court will issue a Certificate of Probable Cause.

It is so ordered.

Dated: October 27, 1977

Robert A. Ward

U. S. D. J.

MICROFILM

OCT 28 1977

NOTICE OF APPEAL

3A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARMINE GALANTE,

77 Civ. 4931
: (RJW)

Petitioner,

-against-

: NOTICE OF APPEAL

THE WARDEN, METROPOLITAN CORRECTIONAL
CENTER and THE UNITED STATES PAROLE
COMMISSION,

Respondents.

S I R :

PLEASE TAKE NOTICE that the petitioner, CARMINE GALANTE, hereby appeals to the United States Court of Appeals for the Second Circuit from the endorsed memorandum order of the Honorable Robert J. Ward, United States District Judge for the Southern District of New York, which order was made on the 27th day of October, 1977 and entered in the office of the Clerk on October 28, 1977.

Dated: New York, New York
October 28, 1977

Yours, etc.,

SAXE, BACON & BOLAN, P.C.
Attorneys for Petitioner
39 East 68th Street
New York, New York 10021
(212) 472-1400

TO: HON. ROBERT B. FISKE, JR.
United States Attorney
Southern District of New York By
Attorney for Respondents
One St. Andrews Plaza
New York, New York 10007

Michael R. Saxe
A Member of the Firm

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
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CARMINA GALANTE, :
:
Petitioner, :
:
vs. : 77 Civ. 4931
:
THE WARDEN, MANHATTAN CORRECTIONAL :
CENTER and THE U.S. PAROLE :
COMMISSION, :
:
Respondents. :
:
-----X

New York, New York
October 27, 1977
2:30 p.m.

B E F O R E:

HONORABLE ROBERT J. WARD,

District Judge

APPEARANCES:

ROY COHN, ESQ.
MICHAEL ROSEN, ESQ.
JAY GOLDBERG, ESQ.
Attorneys for the Petitioner

PETER SUDLER, ESQ.
T. BARRY KINGHAM, ESQ.
Assistant United States Attorneys
Attorneys for the Respondents

1 jpjl

2 order this afternoon, I would be prepared to do that so
3 that you would have my signature to validate what you have
4 heard.

5 MR. COHN: That would be wonderful. If you would
6 sign a very brief order to the effect that the petition
7 is dismissed and that your Honor grants a certificate of
8 probable cause.

9 THE COURT: Mr. Kingham?

10 MR. KINGHAM: We have no objection to that,
11 your Honor.

12 THE COURT: What I will try to do, since I
13 don't have much room on the papers themselves, but I will
14 see that an endorsement is placed on the papers this after-
15 noon so that you will have that certificate available to
16 you.

17 MR. COHN: We will explain if it becomes
18 necessary. I don't think there will be any dispute of the
19 stenographic reporting of your Honor's decision, the
20 circumstances of it. It sounded very articulate and
21 carefully considered. We don't think there will be any
22 problem.

23 We thank you for all the time you gave us.

24 MR. KINGHAM: Nothing further.

25 (Court adjourned.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CARMINE GALANTE,

Petitioner,

-against-

THE WARDEN, MANHATTAN CORRECTIONAL
CENTER and THE UNITED STATES PAROLE
COMMISSION,

Respondents.
-----X

:
:
77 Civ. 4931
R.J.W.

Petitioner Carmine Galante ("Galante") has applied for a writ of habeas corpus admitting him to bail pending a final decision in the parole revocation proceedings which have been instituted against him. For the reasons hereinafter stated, the writ is denied.

In 1974, petitioner was mandatorily released from imprisonment after serving twelve years of a twenty year federal sentence for conspiring to violate the narcotics laws. On October 5, 1977, a mandatory release revocation warrant was issued by the United States Parole Commission, ordering the arrest of Galante for associating with known criminals in violation of the conditions of his release. Petitioner surrendered on October 11, 1977. Immediately thereafter, he filed the present petition seeking bail.

24

This Circuit has recognized that although there is no constitutional right to bail pending parole revocation proceedings, the district court has the power to grant bail in cases where the parolee alleges a due process violation within the parole revocation procedure. Argro v. United States, 505 F.2d 1374, 1377 (2d Cir. 1974). However, in view of the fact that the presumption of innocence is no longer available,¹ this power should be exercised only in unusual circumstances. Id., at 1377-78.

In the present case, petitioner has claimed lack of due process in the conduct of the parole revocation procedure. The Court finds that of the various arguments petitioner has presented in his petition and in his supplementary papers and in oral argument, only one raises a sufficient question of due process to warrant discussion. That claim is petitioner's allegation that the Parole Commission abused its discretion in proceeding by warrant, which resulted in his immediate incarceration, rather than by summons, which would have enabled petitioner to remain at liberty pending the parole revocation proceedings.

Title 18, United States Code, section 4213(a) and 28 C.F.R. section 2.44 provide the Parole Commission the options of proceeding by warrant or by summons. Neither the statute nor the regulations present any restrictions regarding which option should be used in any given circumstance. Thus,

this matter would seem to be completely within the discretion of the Parole Commission. The legislative history of section 4213(a) clearly supports this interpretation. Section 4213(a) was enacted in 1976 to provide for the use of a summons as an alternative to a warrant. The Conferees' Report states:

"This section provides that the Commission may initiate revocation proceedings using either a summons or a warrant procedure. It is the intent of the Conferees that the Commission should minimize the disruption of the parolee's life in any revocation proceeding. One means by which this intent has been implemented in [sic] giving the Commission discretion to use either a summons or warrant when a condition of parole has alleged to have been violated. However, the Conferees recognize that use of a summons for parolees with prior adult or juvenile records may simply be inappropriate." Parole Commission and Reorganization Act, H. Conf. Report 94-838, 94th Cong., 2d Sess. 33 (1976).

While the summons was intended to give the Parole Commission greater flexibility in dealing with alleged violators of parole, implicit in the last sentence of the quotation is the recognition that the Commission was deemed by Congress to be in the best position to decide the appropriateness of the use of a summons, including the right to find that when dealing with convicted criminals, the use of a summons may never be appropriate. Thus, so long as the Parole Commission's decision is a considered and not an arbitrary one, proceeding by warrant rather than by summons can never amount to a denial of due process.

In the instant case, Joseph A. Nardoza, Commissioner for the Northeast Regional Office of the United States Parole Commission, has submitted an affidavit stating that the use of the summons procedure was carefully considered in petitioner's case. He stated that in deciding whether to proceed by summons or warrant, the criteria he considers most important are the past record of the parolee and the number and seriousness of the alleged violations. The Court can hardly state that such criteria are irrational. ²

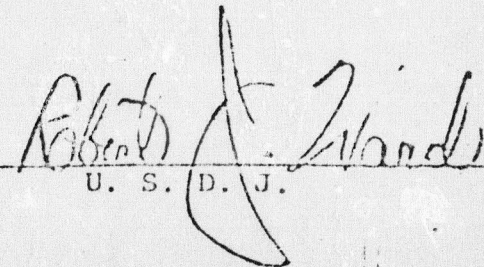
Mr. Nardoza stated that in petitioner's case, his decision to proceed by warrant was influenced by petitioner's past record and the frequency of alleged meetings with persons with known criminal records. ³ He stated that because petitioner's original conviction was for conspiracy with twenty-eight other persons to violate the narcotics laws, he found that the frequency of Galante's alleged meetings with known criminals was "strongly suggestive of a course of conduct that could pose a threat to society." Based on these considerations, the Court can certainly not state that the decision to proceed by warrant was arbitrary, resulting in an abuse of the wide latitude granted the Parole Commission by the statute and regulations. Hence, there was no due process violation.

In light of the preliminary interview conducted by the Commission, petitioner's counsel has submitted an affidavit in which counsel alleges additional violations of due process. In view of all of the circumstances surrounding this case, the Court believes that the new allegations do not make out a due process claim. However, even if petitioner's new allegations raised a colorable due process claim, the present petition would have to be denied because petitioner has not alleged any "unusual circumstances" which mandate the exceptional measure of granting bail. The case law involving applications for bail pending habeas review indicates that "unusual circumstances" include those such as serious deterioration of the petitioner's health while incarcerated, short sentences so near completion that, without bail, collateral review would be ineffective, or possibly extraordinary delay in processing a habeas petition. See Calley v. Callaway, 496 F.2d 701, 702 n. 1 (5th Cir. 1974), and cases cited therein. Here, petitioner has made no showing of any circumstances of this nature.

For the foregoing reasons, the writ is denied and the petition dismissed. Inasmuch as the Court believes that this petition poses a question of law upon which the Court of Appeals should rule, the Court will issue a certificate of probable cause.

It is so ordered.

Dated: October 27, 1977



U. S. D. J.

NOTES

- 1 "The history of the offender, already under sentence, militates against bail." Argro v. United States, 505 F.2d 1374, 1378 (2d Cir. 1974). Moreover, "the threat of reincarceration may prove a strong inducement for flight." Id.
2. Petitioner claims the Commission disregarded the stated criteria for this determination. However, this is incorrect. The criteria to which petitioner refers pertain to the granting of bail by the Commission after the preliminary interview, not to the summons/warrant question. The only standard for the latter question is that in the legislative history of section 4213(a), which seems to give the Commission complete discretion.
- 3 Although no probable cause was found to support some of the forty-five charges at the preliminary hearing, the propriety of proceeding by warrant must be judged from the facts as they appeared at the time of the decision, not in retrospect. Moreover, the eighteen violations for which probable cause was found at the preliminary interview would seem more than adequate to support a finding of frequency of violations.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

CARMINE GALANTE,

Petitioner,

- against -

THE WARDEN, MANHATTAN CORRECTIONAL
CENTER, and THE UNITED STATES PAROLE
COMMISSION,

Respondents.

-----X

Index No. 77CV 4931
(FILED)

ORDER TO SHOW CAUSE

FOR WRIT OF HABEAS
CORPUS

UPON the annexed verified petition of CARMINE GALANTE,
duly verified on the 10th day of October, 1977, the affidavits
of Roy M. Cohn, Esq. and of Carmine Galante, duly sworn to on
the 10th day of October, 1977 and all prior proceedings hereto-
fore had herein, it is

ORDERED, that the respondents, the Warden of the Metro-
politan Correctional Center and the United States Parole Commission,
show cause before this Court, at ^{THE U.S. COURTHOUSE AT} 40 Centre Street, New York, New
York, on the 14th day of October, 1977, at 2:00 o'clock in the
after ^{in Room 35} noon of that day, why a writ of habeas corpus should not
issue herein as prayed for in the said petition and the petitioner
admitted to a reasonable bail; and it is further

ORDERED, that the petitioner be retained in custody
within this district until further order of this Court, and it is
further

^{PERSONAL}
ORDERED, that service of a copy of this order to show

R.J.W.

ORDER TO SHOW CAUSE FOR WRIT OF HABEAS CORPUS

13A

cause together with the papers upon which it is based upon the Honorable Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, attorney for respondents, on or before the 11th day of October, 1977, at 3:00 o'clock P m., be deemed good and sufficient service hereof.

Dated: New York, New York
October 11th 1977

SO ORDERED,

R. T. W.

U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

CARMINE GALANTE,

Petitioner,

- against -

Index No:

THE WARDEN, MANHATTAN CORRECTIONAL
CENTER, and THE UNITED STATES PAROLE
COMMISSION,

PETITION FOR WRIT
OF HABEAS CORPUS

Respondents.

-----X

TO THE HONORABLE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK:

The Petition of CARMINE GALANTE respectfully shows:

1. Petitioner makes this application for a Writ of Habeas Corpus in that he is unlawfully detained and restrained of his liberty by the respondents herein and is now in the custody of the said Warden of the Manhattan Correction Center and the United States Parole Commission, at 15 Park Row, New York, New York.
2. The cause or pretext of such detention and restraint is that the respondent United States Parole Commission has alleged that the petitioner is in violation of parole for allegedly improper associations.
3. Said detention and restraint is unlawful in that the petitioner alleges that the respondent, United States Parole

Commission, has improperly caused the issuance of a warrant revoking petitioner's parole, that said issuance constituted an illegal, arbitrary and capricious abuse of discretion, and that he is entitled to be released upon reasonable bail to be set by this Court.

4. No other remedies are available to the petitioner in that the petitioner was released from federal custody in 1974 after serving 12 years of a 20 year sentence as a mandatory parolee and is presently held in federal custody. Petitioner submits that the accepted procedure for release on bail pending a determination of an alleged parole violation is the issuance of a Writ of Habeas Corpus.

5. No other application for this Writ has heretofore been made to any other court or judge.

WHEREFORE, petitioner prays that a Writ of Habeas Corpus issue herein directed to the said Warden of the Manhattan Correction Center and the United States Parole Commission commanding them to produce the body of the petitioner, CARMINE GALANTE, before this Court at a time and place to be specified in said Writ to the end that this Court may inquire into the cause of the petitioner's detention; that the petitioner be ordered discharged from the detention and restraint aforesaid; and that petitioner be admitted to bail pending preliminary hearing,

parole revocation hearing and determination of the Parole Commission; and that this Court grant such other and further relief as may seem just and proper.

Dated: New York, New York
October 10, 1977.

Carmine Galante

CARMINE GALANTE, (petitioner)

STATE OF NEW YORK)
COUNTY OF NEW YORK)

SS.:

VERIFICATION

CARMEN GALANTE, being duly sworn, deposes and says:

I am the petitioner in the action herein; I have read the foregoing Petition for Writ of Habeas Corpus, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

Carmine Galante

CARMINE GALANTE.

Sworn to before me this

10th day of October, 1977.

Ronald F. Poepplein

RONALD F. POEPPLEIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 30-4503069
Qualified in Nassau County
Commission Expires March 30, 1979

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -X

CARMINE GALANTE,

Petitioner, :

AFFIDAVIT

- against -

Index No:

THE WARDEN, MANHATTAN CORRECTIONAL
CENTER, and THE UNITED STATES PAROLE
COMMISSION, :

Respondents.

----- X

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

ROY M. COHN, being duly sworn, deposes and says:

I am associated with SAXE, BACON & BOLAN, P.C. attorneys
for CARMINE GALANTE, and submit this affidavit in support of Mr.
GALANTE's application for a Writ of Habeas Corpus, and an order
admitting him to reasonable bail pending the final determination
of the charges which seek to revoke his mandatory release parole
status.

For nearly four years Mr. GALANTE has been on parole
and has been supervised by a series of Probation Department
officers attached to the Southern District of New York. Mr. GALANTE
has regularly, religiously and scrupulously comported with the
rules and regulations imposed upon him by the parole officers and

has even gone further and taken affirmative action to keep the Parole Department fully advised as to each and every one of his activities .

My office, on several occasions, has written directly to Mr. GALANTE's Parole Officer offering any and all assistance including meeting with them in order to answer any questions they might have which might have been generated by the unfounded allegations which may have appeared regularly in the media. In addition thereto, my office has been in regular telephonic communication with Mr. GALANTE's current parole officer, keeping him abreast of recent legal situations which were given extensive and widespread coverage in the press. At all times we have offered to make ourselves available to answer any and all inquiries which the parole people might be interested in.

28 C.F.R. Section 2.44 provides two methods which may be utilized by the Parole Commission where there are possible violations of parole. In the first instance the Commission may issue a summons requiring the offender to appear for a preliminary interview for local revocation hearing. The second method is to issue a warrant for the apprehension and return of the offender to custody. Here, the Commission apparently chose the latter method. It is respectfully submitted that in view

of the fact that Mr. GALANTE has scrupulously adhered to all the rules and directions of his supervision, has never received even a hint of warning orally or in writing, is not alleged to have committed a violation of law and clearly poses no threat there to flee, or present a danger to the community, - the issuance of the warrant with its immediate consequences of detention - under the circumstances here - is an abuse of discretion which this Court should swiftly rectify.

It is further submitted that this Court should admit Mr. GALANTE to reasonable bail pending litigation of the allegations against him. Mr. GALANTE has never failed to report when required or to keep his parole officer advised of his whereabouts. Mr. GALANTE, further, has substantial roots in this community by virtue of his living in New York City, and the presence of his family here. Further more, as is well documented, Mr. GALANTE is under constant and continuous surveillance, so that the threat of flight is non-existent.

WHEREFORE, for all the reasons set forth herein, it is respectfully requested that this Writ be granted in all respects and that he be admitted to reasonable bail pending determination of the charges alleged to have been committed.

RONALD F. POEPPLEIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 30-4608059
Qualified in Nassau County
Commission Expires March 30, 1978

Sworn to before me this

10th day of October, 1977

ROY M. COHN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

CARINE GALANTE,

Index No.

Petitioner, :

- against - :

AFFIDAVIT

THE WARDEN, MANHATTAN CORRECTIONAL:
CENTER, and THE UNITED STATES
PAROLE COMMISSION, :

Respondents. :

-----X

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

CARMINE GALANTE, being duly sworn, deposes and says:

I am the petitioner-relator herein, and submit this
affidavit in further support of my petition for a writ of habeas
corpus. I have read the foregoing affidavit of Roy M. Cohn, Esq.
I hereby join in and adopt all factual statements contained
therein as if they were my own.

Carmine Galante

CARMINE GALANTE

Sworn to before me
this 10th day of
October, 1977

Ronald F. Poepplein

RONALD F. POEPPLEIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 30-1113059
Qualified in New York County
Commission Expires March 30, 1979

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

CARMINE GALANTE, :

Petitioner, :

- v -

AFFIDAVIT

THE WARDEN OF THE METROPOLITAN :
CORRECTIONAL CENTER, UNITED :
STATES PAROLE COMMISSION, :

77 Civ. 4931 (RJW)

Respondents. :

-----x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

MORRIS KUZNESOF, being duly sworn, deposes and
says:

1. I have been Chief United States Probation
Officer in this District since September 27, 1976. I was
appointed United States Probation Officer for this District
first on February 1, 1951; Supervising United States
Probation Officer on June 12, 1972; Deputy Chief United
States Probation Officer on October 22, 1974, and make this
affidavit in connection with Carmine Galante's application
for bail pending parole revocation proceedings.

2. To my knowledge, the United States Board of
Parole, now known as the United States Parole Commission,
has never proceeded against a parolee or a mandatory
releasee by means of a summons. Warrants have always been
issued for alleged parole and mandatory release violators
known to the Southern District of New York.

3. The United States Parole Commission, to the best of my knowledge, did not alter their procedures in any way with reference to the recent charges made against Carmine Galante.

4. The Probation Department of this Court was responsible for the supervision of mandatory releasee Carmine Galante from the time of his release on January 24, 1974, up until his surrender as an alleged mandatory release violator at 7:30 a.m. on October 11, 1977.

5. The following chronology demonstrates that all procedural and substantive legal requirements have been followed in this case, and that Mr. Galante and his attorneys have been given the utmost consideration:

a) The Probation Department of this Court recommended to the Parole Commission on five occasions that Mr. Galante be charged with the violation of his mandatory release. These requests for warrants were sent by myself as Chief United States Probation Officer, and by Mr. Joel W. Moss, the supervising United States Probation Officer on August 15, September 9, September 19, September 26, and September 30, 1977. It is our intention to follow the usual procedures and to permit Mr. Galante and his attorneys to read or review these letters on the scheduled date of the adjourned preliminary interview, now set for October 18, 1977.

b) The warrant was issued on October 5, 1977 at the Regional Office of the Parole Commission in Philadelphia, Pennsylvania.

c) The warrant was then sent via mail to Mr. Frank Juliano, United States Marshal, United States Courthouse, One St. Andrew's Plaza, New York, New York 10007, with a copy to USPO Joel W. Moss. Although Mr. Juliano is no longer United States Marshal, he is a deputy charged with security for the Second Circuit. He was given responsibility for execution of the warrant.

d) During the morning of Friday, October 7, 1977, our office received copies of the warrant application prepared by Mr. James C. Rogers, Case Analyst, United States Parole Commission, which also contained the fact that the warrant was issued on October 5, 1977. However, Mr. Juliano did not receive the actual warrant until about 1:30 p.m. on October 7, 1977.

e) The United States Attorney's office was not given a copy of the warrant or the warrant application until approximately one hour prior to the scheduled appearance before Your Honor on Tuesday, October 11, 1977, several hours after Mr. Galante and his attorney had received them.

f) Mr. Galante, in the presence of his attorney, Mr. Michael Rosen, surrendered to Mr. Juliano at 7:30 a.m. on October 11, 1977. The Probation Office was not notified and we first became aware of the surrender when a newspaper reporter telephoned us at about 8:30 a.m. Almost immediately, arrangements were made for Mr. Joseph E. Loughran, United States Probation Officer, to provide Mr. Galante with a interview. Please note that this is an interview and not a hearing which was provided. Mr. Galante and his attorneys were

AFFIDAVIT OF MORRIS KUZNESOF, OCTOBER 12, 1977 25A
given copies of the warrant application (Parole Form H-20, examples attached), which contained the allegations against him. Mr. Galante was advised of his rights, and, as is required, was given the opportunity to request a court-appointed attorney, which he refused. He was also given, to review with his attorney, Parole Form F-2, which provides an explanation of the parole revocation process. We gave him a number of choices, from which he chose to postpone the preliminary interview until October 18, 1977, or sooner, if he wishes.

6. Attached hereto are photostatic copies of the warrant, the application and the Checklist of Procedures and Legal Rights, which was prepared by Mr. Loughran at the time of the preliminary interview. The last item is not checked, because Mr. Galante did not respond to the offer to provide witnesses and the interview ended at that point.

7. Mr. Galante will be afforded the required hearings in the normal course. No unusual procedures have been followed, and the Parole Commission and this department, have given this matter serious and prolonged consideration and attention.

Morris Kuznesof
MORRIS KUZNESOF
Chief U.S. Probation Officer

Sworn to before me this
12th day of October, 1977.

George E. Nash
GEORGE E. NASH
Notary Public, State of New York
No. 52-46
Qualified in State
Commission Expires 11-23

Parole Form H-20
(Rev. April, 1977)

UNITED STATES DEPARTMENT OF JUSTICE

United States Parole Commission

Washington, D. C. 20537

U. S. PROBATION OFFICE

WARRANT APPLICATION SO. DISTRICT OF NEW YORK

TO: United States Parole Commission. Region _____ Date _____
Case of _____ Reg. No. _____
Race _____ Birth Date _____ FBI No. _____
(Sentence) (Special Parole) began _____ District from _____
Original offense _____
Sentence began _____ Released _____
District to _____ Transferred to _____ M.P. _____ Parole _____
Violation date _____ Termination date _____

You shall, unless you have been convicted of a new offense, be given a preliminary interview by an official designated by a Regional Commissioner to determine if there is probable cause to believe that you have violated the conditions of your release, and if so, whether to release you or hold you for a revocation hearing.

At your preliminary interview and any subsequent revocation hearing you may present documentary evidence and voluntary witnesses on your behalf, and, if you deny the charge(s) against you, you may request the presence of those persons who have given information upon which the charges are based. Such witnesses will be made available for questioning unless good cause is found for their non-appearance.

You may be represented by an attorney or other representative of your choice, or, if you are unable to pay for counsel, an attorney will be provided by the U. S. District Court if you fill out and promptly return a Form CJA-22 to a U. S. Probation Officer.

If, after a revocation hearing, you are found to have violated the conditions of your release the Commission may:

- (1) restore you to supervision, and, if appropriate, (a) reprimand you; (b) modify your conditions of supervision; or
- (c) refer you to a residential community treatment center for the remainder of your sentence; or
- (2) revoke your parole or mandatory release, in which case the Commission will also decide when to consider you for further release.

CHARGES:

1. ADMINISTRATIVE LETTER DATED HAS SENT A CERTAINLY FORMAL REQUEST FOR ASSISTANCE 1976 since September 4, 1976 Subject has associated with the following persons who have criminal records, according to USDO files records of August 15, 1977, September 9, 1977, September 13, 1977, September 20, 1977 and September 30, 1977, with attachments:

- (4) Letter, 11/16/76 FBI to 1-978 75 1000 HQ, 10/27/76
10/16/76 Latta Expresso, 742 1011 HQ, 10/27
7525 5-22-11-1000

- (b) Ensign Joe Louis Blumstein FBI No. 1 510 147 (NY) b6 b7C
1/2/76 NY Blumstein, 147 Blumstein St., NYC
NYC 10011-2000

- (c) File # 2111-6 FBI No. 10445-177-1-177
1/11/77 1:00 PM
FBI - Dallas

- (2) Mirrored copy sent Intelligence Division 4-11-77 by [redacted]
 5/1/76 Lincoln/Croat [redacted]
 5/21/76 Mirrored/Croat [redacted]
 12/10/76 Croat St. [redacted] Mirrored St. [redacted]
 8/1/77 MI Croat St. [redacted]
 1978 [redacted]

Date Warrant Issued 10/5/77
District to which sent 9/12

Warrant recommended by: *[Signature]*

U.S. Parole Commission

SUPERVISING U. S. PROBATION OFFICER

UNITED STATES DEPARTMENT OF JUSTICE

United States Parole Commission
Washington, D. C. 20537

WARRANT APPLICATION

TO: United States Parole Commission. Region 12345 Date 10/5/77
Case of James Earl Ray Reg. No. 10013-177
Race White Birth Date 5/1/28 FBI No. 10013-177
(Sentence) (Special Parole) began 1/1/77 District from 12345
Original offense 1st Degree Murder
Sentence began 1/1/77 Released 1/1/77
District to 12345 Transferred to 12345 M.R. 12345 Parole 12345
Violation date 1/1/77 Termination date 1/1/77

You shall, unless you have been convicted of a new offense, be given a preliminary interview by an official designated by a Regional Commissioner to determine if there is probable cause to believe that you have violated the conditions of your release, and if so, whether to release you or hold you for a revocation hearing.

At your preliminary interview and any subsequent revocation hearing you may present documentary evidence and voluntary witnesses on your behalf, and, if you deny the charge(s) against you, you may request the presence of those persons who have given information upon which the charges are based. Such witnesses will be made available for questioning unless good cause is found for their non-appearance.

You may be represented by an attorney or other representative of your choice, or, if you are unable to pay for counsel, an attorney will be provided by the U. S. District Court if you fill out and promptly return a Form CJA-22 to a U. S. Probation Officer.

If, after a revocation hearing, you are found to have violated the conditions of your release the Commission may:

- (1) restore you to supervision, and, if appropriate, (a) reprimand you; (b) modify your conditions of supervision; or
- (c) refer you to a residential community treatment center for the remainder of your sentence; or (2) revoke your parole or mandatory release, in which case the Commission will also decide when to consider you for further release.

CHARGES:

2.

(a) James Earl Ray, "Doc" Ray, Indictment No. 10013-177, 10013-177
5/1/77 1 Tulsa Ave., Houston, Texas, TX
5/5/77 1 Tulsa Ave., Houston, Texas, TX
Suffolk Co. Surveillance

6/11/77 1 Tulsa Ave., Houston, Texas, TX
6/12/77 Chicago, Ill., Old Westland, Ill., TX
Suffolk Co. Surveillance

(b) Joseph Anthony Ellis, Parole No. 10013-177, 1105-177
4/4/77 and 4/5/77 Dallas, Texas
Joint FBI & SCA Surveillance
4/17/77 1 Tulsa Ave., Houston, Texas, TX
4/18/77, 4/19/77, 4/20/77, 4/21/77, 4/22/77
Suffolk Co. Surveillance

5/11/77 127 South St., 127 South St., TX
5/17/77 127 South St., 127 South St., TX
5/18/77 127 South St., 127 South St., TX
5/19/77 127 South St., 127 South St., TX
127 South St., 127 South St., TX
Cafeteria Restaurant, 127 South St., TX

BEST COPY AVAILABLE

Date Warrant Issued 10/5/77
District to which sent 12345

SUPERVISING U. S. PROBATION OFFICER

Warrant recommended by:

James C. Ray

U.S. Parole Commission

Parole Form H-20
(Rev. April, 1977)

UNITED STATES DEPARTMENT OF JUSTICE
United States Parole Commission
Washington, D. C. 20537

WARRANT APPLICATION

TO: United States Parole Commission. Region SEED Date 10/1/77
Case of GUARNEY, Caroline Reg. No. 30214-177
Race _____ Birth Date _____ FBI No. _____
(Sentence) (Special Parole) began _____ District from _____
Original offense _____
Sentence began _____ Released _____
District to _____ Transferred to _____ M.R. _____ Parole _____
Violation date _____ Termination date _____

You shall, unless you have been convicted of a new offense, be given a preliminary interview by an official designated by a Regional Commissioner to determine if there is probable cause to believe that you have violated the conditions of your release, and if so, whether to release you or hold you for a revocation hearing.

At your preliminary interview and any subsequent revocation hearing you may present documentary evidence and voluntary witnesses on your behalf, and, if you deny the charge(s) against you, you may request the presence of those persons who have given information upon which the charges are based. Such witnesses will be made available for questioning unless good cause is found for their non-appearance.

You may be represented by an attorney or other representative of your choice, or, if you are unable to pay for counsel, an attorney will be provided by the U. S. District Court if you fill out and promptly return a Form CJA-22 to a U. S. Probation Officer.

If, after a revocation hearing, you are found to have violated the conditions of your release the Commission may:
(1) restore you to supervision, and, if appropriate, (a) reprimand you; (b) modify your conditions of supervision; or
(c) refer you to a residential community treatment center for the remainder of your sentence; or (2) revoke your parole or mandatory release, in which case the Commission will also decide when to consider you for further release.

CHARGES:

(1) Joseph Anthony Tilio (Continued)

6/8/77 Silver Bay, 117 South St., NYC and various other locations in NYC
NYC Surveillance

6/11/77 1 Tilio Ave., Brooklyn Bay, LI

6/12/77 1 Tilio Ave., Brooklyn Bay, LI

6/13/77 1 Tilio Ave., Brooklyn Bay, LI
6/14/77 1 Tilio Ave., Brooklyn Bay, LI
NYC Surveillance

6/15/77 3 Tilio Ave., Brooklyn Bay, LI
NYC Surveillance

6/16/77 1 Tilio Ave., Brooklyn Bay, LI

6/17/77, 7/1/77
NYC Surveillance

7/1/77 Silver Bay, 117 South St., NYC

7/2/77 115 W. 25th St., NYC

7/25/77 Silver Bay, 117 South St., NYC

Date Warrant Issued 10/1/77
District to which sent NYC

SUPERVISING U. S. PROBATION OFFICER

Warrant recommended by:

U.S. Parole Commission

Parole Form H-20
(Rev. April, 1977)

UNITED STATES DEPARTMENT OF JUSTICE
United States Parole Commission
Washington, D. C. 20537

WARRANT APPLICATION

TO: United States Parole Commission. Region 1370 Date 10/5/77
Case of JOSEPH ANTHONY "JOE" MOCALUSO Reg. No. 9111 151
Race _____ Birth Date _____ FBI No. _____
(Sentence) (Special Parole) began _____ District from _____
Original offense _____
Sentence began _____ Released _____
District to _____ Transferred to _____ M.R. _____ Parole _____
Violation date _____ Termination date _____

You shall, unless you have been convicted of a new offense, be given a preliminary interview by an official designated by a Regional Commissioner to determine if there is probable cause to believe that you have violated the conditions of your release, and if so, whether to release you or hold you for a revocation hearing.

At your preliminary interview and any subsequent revocation hearing you may present documentary evidence and voluntary witnesses on your behalf, and, if you deny the charge(s) against you, you may request the presence of those persons who have given information upon which the charges are based. Such witnesses will be made available for questioning unless good cause is found for their non-appearance.

You may be represented by an attorney or other representative of your choice, or, if you are unable to pay for counsel, an attorney will be provided by the U. S. District Court if you fill out and promptly return a Form CJA-22 to a U. S. Probation Officer.

If, after a revocation hearing, you are found to have violated the conditions of your release the Commission may:
(1) restore you to supervision, and, if appropriate, (a) reprimand you; (b) modify your conditions of supervision; or
(c) refer you to a residential community treatment center for the remainder of your sentence; or (2) revoke your parole or mandatory release, in which case the Commission will also decide when to consider you for further release.

CHARGES:

(1) Joseph Anthony "Joe" Mocaluso (Continued)

6/1/77 Broadway & 49th St., NYC

8/1/77 135 E. 34th St., NYC

NYC Surveillance

(2) Angelo "Little Mac" Moccione FBI No. 107 717 NYD No. 71412

10/5/76 Conisella Apartment 107 A Voluntary St. and various other locations in NYC

FBI Surveillance

6/7/77 No. 5420 Baylor University Medical Center, Dallas, Texas
Joint FBI & DCP Surveillance

6/8/77 River St., 117 South St., NYC

NYC Surveillance

6/11/77 1 1/2 11th Ave., Harlem Boys, II

6/12/77 1 1/2 11th Ave., Harlem Boys, II

Out to Inn, 115 West 11th St., NYC
FBI Surveillance

Date Warrant Issued 10/5/77

District to which sent NYC

SUPERVISING U. S. PROBATION OFFICER

Warrant recommended by:

Joseph M. [Signature]

U.S. Parole Commission

Parole Form H-20
(Rev. April, 1977)

UNITED STATES DEPARTMENT OF JUSTICE

United States Parole Commission

Washington, D. C. 20537

WARRANT APPLICATION

TO: United States Parole Commission. Region 1000 Date 10/2/77
 Case of QUANTAL, CARLOS Reg. No. 101-131
 Race _____ Birth Date _____ FBI No. _____
 (Sentence) (Special Parole) began _____ District from _____
 Original offense _____
 Sentence began _____ Released _____
 District to _____ Transferred to _____ M.R. _____ Parole _____
 Violation date _____ Termination date _____

You shall, unless you have been convicted of a new offense, be given a preliminary interview by an official designated by a Regional Commissioner to determine if there is probable cause to believe that you have violated the conditions of your release, and if so, whether to release you or hold you for a revocation hearing.

At your preliminary interview and any subsequent revocation hearing you may present documentary evidence and voluntary witnesses on your behalf, and, if you deny the charge(s) against you, you may request the presence of those persons who have given information upon which the charges are based. Such witnesses will be made available for questioning unless good cause is found for their non-appearance.

You may be represented by an attorney or other representative of your choice, or, if you are unable to pay for counsel, an attorney will be provided by the U. S. District Court if you fill out and promptly return a Form CJA-22 to a U. S. Probation Officer.

If, after a revocation hearing, you are found to have violated the conditions of your release the Commission may:
 (1) restore you to supervision, and, if appropriate, (a) reprimand you; (b) modify your conditions of supervision; or
 (c) refer you to a residential community treatment center for the remainder of your sentence; or (2) revoke your parole or mandatory release, in which case the Commission will also decide when to consider you for further release.

CHARGES:

5.

(a) Angelo "Little Man" Prescrusso (Continued)

7/27/77 River Box, 117 South St., NYC

3/8/77 Red Rock Box, 1025 Bath Ave., Brooklyn, NY

NYC Surveillance

(b) Michael Wickey Valfarone NY No. 4 944 100 NY No. 750223

10/5/76 Room - Barbert, 104 W. 57th St., NYC

28th St., & 5 Ave., NYC

3/22/77 Room - Barbert, 104 W. 57th St., NYC

W. 10th St., & Park Ave., NYC

5/10/77 5 W. 57th St., NYC

5/1/77 Room - Barbert, 104 W. 57th St., NYC

25 East Broadway, New York, Brooklyn, NY

1500 Broadway, NYC

7/17/77 Room - Barbert, 104 W. 57th St., NYC

Inside Public House under 5 W. 57th St., NYC

W. 50th St., & 10th Ave., NYC

NYC Surveillance

Date Warrant Issued 10/2/77

District to which sent _____

Warrant recommended by: [Signature]

U.S. Parole Commission

SUPERVISING U. S. PROBATION OFFICER

FPI-WAR-3-30-77-60H SETS-7503

UNITED STATES DEPARTMENT OF JUSTICE

United States Parole Commission

Washington, D. C. 20537

PRELIMINARY INTERVIEW AND REVOCATION HEARING FORM

PART ONE

This part is to be completed at the initial visit of the interviewing officer following the arrest on a Warrant issued by the United States Parole Commission of an alleged parole or mandatory release violator. The explanation of the Commission's procedures and the alleged violator's legal rights which appears below must be read and acknowledged by the alleged violator, and a copy provided to him.

The rules of the United States Parole Commission provide that, as an alleged parole or mandatory release violator who has not been convicted of a criminal offense committed while under supervision, you shall be given a preliminary interview by an official designated by the Commission. At that interview, you will be given an opportunity to respond to the charges appearing on the Warrant Application. You will also be apprised of the information supporting those charges. Following the interview, you will be held in local custody pending a determination by the Commission as to whether there is probable cause to believe that you have violated a condition of your release, and if so, whether to order a revocation hearing to make a final determination of the charges against you. The rules of the Commission further provide that you may be represented at your preliminary interview by an attorney, and that you may present voluntary witnesses and documentary evidence in defense of the charges against you.

OPPORTUNITY TO REQUEST POSTPONEMENT OF PRELIMINARY INTERVIEW. The preliminary interview will be held at this time unless you request postponement of the interview in order to permit you to obtain an attorney and/or witnesses. Such postponement will not exceed thirty days.

COURT-APPOINTED ATTORNEY. If you cannot pay for the services of an attorney and desire legal assistance, you may complete Form C.J.A.-22 to request the local United States District Court to appoint an attorney to represent you at your preliminary interview. Your interviewing officer will furnish you with this form, and will present it to the Court for you. If you waive representation by an attorney at your preliminary interview, you may, at the conclusion of the interview or at any time thereafter, complete Form C.J.A.-22 to request appointment of an attorney to represent you in the event the Commission orders a revocation hearing.

OPPORTUNITY TO REQUEST ADVERSE WITNESSES. If you deny the charges against you and have not been convicted of a new criminal offense during your release, you may also request the presence at a postponed preliminary interview of any adverse witness who has given information upon which revocation may be based. If you do so by completing this form, such witness will be made available at the interview for questioning unless good cause is found to deny your request. Your supervising U. S. Probation Officer will normally be present if you are being held in your district of supervision.

Pending a postponed preliminary interview you may request that any witness be interviewed and that the testimony of such witness be reported to the Commission. When appropriate, the Commission may order that a postponed preliminary interview be conducted as a local revocation hearing.

THIS FORM CONSTITUTES THE NOTICE OF YOUR
PRELIMINARY INTERVIEW REQUIRED BY LAW

I have read (or had read to me) the above explanation of the Commission's preliminary interview procedure, and I fully understand my legal rights under that procedure. (Initial one of the choices below):

☐ I WISH TO PROCEED WITH MY PRELIMINARY INTERVIEW AT THIS TIME.

(B) ☒ I REQUEST A POSTPONEMENT (NOT TO EXCEED THIRTY DAYS) OF MY PRELIMINARY INTERVIEW IN ORDER TO OBTAIN AN ATTORNEY AND/OR WITNESSES / TO REVIEW AND INVESTIGATE THE CHARGES, HAVING RECEIVED THE WARRANT APPLICATION WITHIN
I request the following adverse witnesses: THE LAST HOUR

(Signature of Interviewing Officer)

(Title)

(District)

(Date)

(Signature of parolee or mandatory releasee)

(Printed name)

(Register number)

UNITED STATES BOARD OF PAROLE

NAME GALANTE, CARLINEDATE OF INTERVIEW 10/11/77

REGISTER NUMBER _____

PRELIMINARY INTERVIEW CHECKLIST OF PROCEDURAL AND LEGAL RIGHTS

- /✓/ Has received a copy of warrant application (Form H-20).
- /✓/ Advised of right to counsel and completed CJA-22.
- /✓/ Advised that the substance of the charges concerning him as contained in the reports received by the Board are stated in the warrant application.
- /✓/ Advised that the purpose of the Preliminary Interview is to permit the alleged violator to present his explanation or denial of the charges listed on the warrant application.
- /✓/ Advised that the Board will notify him of its decision as to probable cause by letter following receipt of the Interviewing Officer's report.
- / / All adverse witnesses requested have been asked to appear and have either refused or are present at this time, or good cause has been stated for refusal to request their appearance.

Parole Form H-24
(May, 1977)

UNITED STATES GOVERNMENT

RECEIVED

Memorandum

U. S. PROBATION OFFICE
SO. DISTRICT OF NEW YORK

DATE WARRANT ISSUED: 10/5/77

TO : Frank Juliano
US Marshal
US Courthouse
1 St. Andrews Plaza
New York, N.Y. 10007

FROM : *OFFICE*
JAMES C. ROGERS, Case Analyst, NERO US Parole Commission

CASE OF : GALANTE, Carmine - Reg. 30218-133

Enclosed are copies of Warrant Application and Warrant in duplicate, issued by the United States Parole Commission for the above-named prisoner.

() 1. If the prisoner is facing a local charge, or is in jail or on bond, withhold execution of the Warrant until disposition is made or until you receive instructions from this office.

(2) 2. If the prisoner is ~~SCOTTED~~ committed on a new Federal charge, return the Warrant unexecuted to the issuing Region and indicate which institution has been designated for service on the new sentence.

(1) 3. Please assume custody.

() 4. Please place a detainer and assume custody if and when released by local authorities on the charges pending.

() 5. Please assume custody if located. If apprehended by and in custody of authorities, place a detainer.

() 6. Please hold Warrant in abeyance. If pending charge results in no-conviction, advise Commission for further instructions. However, should subject change plea to guilty or be found guilty, place a detainer and assume custody if and when released.

() 7. Since there has been a conviction of an offense committed while under supervision, no preliminary interview is needed unless specifically ordered by the Commission. When Warrant is executed give a copy of the Warrant Application to the Probation Officer and advise the Regional Office of the Parole Commission which issued the Warrant that subject is in custody, the place of confinement, and the date Warrant was executed.

Copy to:

USPO JOEL MOSS, S/NY

* Probation Officer: State known persons and places which will aid in apprehension.

NOTE: Give one copy of Warrant Application to the prisoner and furnish one copy to the U. S. Probation Officer as soon as practical after taking custody. When prisoner is returned to the designated institution, leave Warrant Application and one Warrant with Warden. Make your return on the other Warrant to the Regional Commissioner of the Parole region where it was issued.

UNITED STATES DEPARTMENT OF JUSTICE
United States Board of Parole
Washington, D.C. 20537

PRELIMINARY INTERVIEW AND REVOCATION HEARING FORM

The Rules of the Board of Parole provide that an alleged parole or mandatory release violator shall be afforded a preliminary interview by an official designated by the Board, and shall be held in federal custody pending the interview and further disposition by the Board. The alleged violator may be represented at the preliminary interview and any subsequent revocation hearing by an attorney whom he employs and/or may present documents and voluntary witnesses having information bearing on the charges.

If the alleged violator wishes to have an attorney and is financially unable to employ one attorney, may request (1) the local U.S. District Court to appoint an attorney for the postponed preliminary interview, or (2) the U.S. District Court in the district where the revocation hearing is to be held, to appoint an attorney. Counsel may be appointed if the Court finds that the interest of justice require such appointment and that the alleged violator is financially unable to employ counsel of his own choosing. The U.S. Probation Officer will furnish the alleged violator copies of Form CJA-22 to request such appointed counsel.

Following the preliminary interview the Board will determine whether to withdraw its warrant or whether the alleged violator should be afforded a revocation hearing locally or at a federal institution. In addition to presenting documents and voluntary witnesses at the preliminary interview, the alleged violator, providing that he has not been convicted of a criminal offense during his release and also that he denies all charges of violation of the conditions of his release, may request the probation officer to ask any adverse witnesses to attend the preliminary interview for the purpose of cross-examination by the alleged violator. Such request will be granted whenever feasible.

POSTPONED PRELIMINARY INTERVIEW. Upon request a preliminary interview will be postponed by the interviewer so the alleged violator may make arrangements for appearance of an attorney and/or witnesses at the interview. A postponement may also be granted to permit the probation officer to request adverse witnesses to appear for cross-examination at the preliminary interview, provided the alleged violator has not been convicted of a new law violation and if he denies all charges of parole violation.

HEARING AT A FEDERAL INSTITUTION. If, following the preliminary interview, the Board has not ordered release, the alleged violator will be returned to a federal institution for his revocation hearing if he admits or does not deny that he is guilty of violating the conditions of release (as charged on the warrant application) or if he has been convicted of violation of law since his release. He will also be returned to a federal institution, even though he denies his guilt and has no new convictions, if he requests that his revocation hearing be held in a federal institution and if he wishes to waive his right to request cross-examination of adverse witnesses.

LOCAL REVOCATION HEARING. Following the preliminary interview, if the alleged violator has denied violation of any condition of release and has not been convicted of a new law violation while under supervision, the Board may conduct a local revocation hearing reasonably near the place of the alleged violation, provided he wishes to have an attorney or witnesses or requests that adverse witnesses be asked to attend. If two or more violations are charged the Board will determine the place of the hearing. Where appropriate, a local revocation hearing may take the place of a preliminary interview.

CJA Form 22 (9/76)

Appointment of Counsel under
the Criminal Justice ActUNITED STATES DISTRICT COURT
for theSOUTHERN DISTRICT OF NEW YORKRegister No. 30213-133

U.S. Court Docket No. _____

IN THE MATTER OF STATEMENT OF
(PAROLEE) (MANDATORY RELEASEE)STATEMENT OF PAROLEE OR MANDATORY RELEASEE CONCERNING
APPOINTMENT OF COUNSEL UNDER THE CRIMINAL JUSTICE ACT

I, _____, having been fully advised of the charges against me and of my rights as set forth in the attached copy of the (Notice of Pending Dispositional Review) (Warrant Application) (Summons to Appear) understand that I may apply to the United States District Court for appointment of counsel to assist or represent me in this matter before the United States Parole Commission, and that such representation by counsel will be furnished to me if the judicial officer determines I am financially unable to obtain attorney representation;

Pursuant to such notification concerning appointment of counsel,

1. CARMINE GALANTE I do not wish to apply to the District Court for appointment of counsel.
2. _____ I do hereby apply to the District Court for appointment of counsel and in connection with this application I state as follows concerning my financial condition:

I am..... Employed _____ Unemployed _____
 If employed, state weekly income \$ _____
 If self-employed, state average weekly income \$ _____
 Cash on hand and in bank \$ _____
 Number of dependents _____
 Property owned: _____

I certify the above to be correct.

Carmine Galante

(Signature of Applicant)

Witness:

Joseph E. Loughran, U.S. Probation Officer

(Signature and Title)

DATE: 10/11/77

A false or dishonest answer to a question in this application may be punishable by fine or imprisonment or both, (18 USC 1001).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CARMINE GALANTE,

Petitioner,

- against -

THE WARDEN, MANHATTAN CORRECTIONAL
CENTER and THE UNITED STATES PAROLE
COMMISSION,

Respondents.
-----X

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STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

ROY M. COHN, being duly sworn, deposes and says:

I am associated with the firm of Saxe, Bacon & Bolan,
P.C., attorneys for the petitioner, Carmine Galante, and submit
this affidavit in reply to the respondents' opposing papers and
in further support of this application.

Initially, this Court must be cognizant of the fact
that the sole issue before this Court is whether or not the
petitioner should be admitted to reasonable bail. We are not
challenging the Parole Commission's right to revoke, but rather
the methods employed. We are faced with a situation wherein the
petitioner has an unblemished four year parole record, counsel
has constantly been in touch with the Probation Department (see
letters annexed as Exhibits A, B & C) all regulations have been
complied with and affirmative steps have been taken to cooperate

EXHIBIT F-1

with the various probation officers assigned to this case.*

This case certainly goes far beyond the scope of a normal revocation proceeding by virtue of:

- (1) the extensive and persistent publicity faced by the petitioner;
- (2) the Florida and California incidents previously alluded to;
- (3) the special "treatment" of Galante vis a vis the continual surveillance;
- (4) the cooperation and communication with the probation officers.

Unquestionably this Circuit recognizes the availability of bail to an alleged parole violator. Argro v. United States, 505 F.2d 1374 (2nd Cir. 1974); United States v. Schrieber, 367 F.Supp. 791 (E.D.N.Y. 1973). The instant situation herein represents the extreme and is far more compelling to the issuance of a summons rather than a warrant wherein the petitioner has been neither arrested, charged with or convicted of any criminal activities subsequent to his release on parole, and where, until

* In two instances, one in Florida and one in California, petitioner was unjustly harassed by police officials. In both cases, with permission to travel, the probation officer backed up Galante's right to travel, and one of these incidents evoked an official apology.

7:30 a.m. on October 11, 1977, he was at liberty.* The facts prededent to this date clearly show that the election to proceed by warrant rather than summons was a violation of due process.

In spite of all the facts as set forth in these affidavits - the assertion of unproven allegations, the failure to discuss any problems with counsel and the mere presence and availability of cooperative counsel - the Parole Commission elected to reincarcerate Galante despite the fact that the repeated assurances from the Probation Department that there was "no problem." In reality, the existence of the warrant was leaked to the media on October 8, and Galante was imprisoned forthwith.

Respondents' counsel has argued on failure to exhaust remedies as a basis for the denial of bail. As can be seen from the accompanying affidavit of George Peter Lamb, Jr., Esq., all other remedies have been exhausted. Can respondents seriously argue that the very same people who have refused to convert the warrant into a summons would agree to release Mr. Galante prior to the full revocation hearing? Plainly stated, there is no hope for release. This Court is merely asked to implement the language and intent of Congress, as set forth in the Lamb affidavit, to

* Although counsel had agreed to voluntarily surrender Galante, this did not prevent federal agents from searching for him for days, even to the extent of surveilling his daughter's home. Counsel for the respondents asserts in a foot note to their memorandum that no offer was made prior to October 8 to surrender the petitioner. Neither Mr. Kingham nor Mr. Sudler was involved in those discussions, but your deponent was. Simply put, such discussions did, in fact, occur.

refrain from disrupting the life and freedom of a parolee.

The preliminary interview will offer no relief to Galante. It will unquestionably be a lengthy proceeding with the examination and cross-examination of witnesses, the production of material and an eventual decision. Even if the hearing officer recommends release thereafter, more time will be wasted while Galante languishes in jail.

"Unusual circumstances" are certainly present in this situation. The petitioner is faced with 40 allegations of criminal association over an eleven month period (September, 1976 through August, 1977) although his attorneys were told during this period that there was no problem. If incarcerated, the preparation of his response to these allegations will be hampered, although his counsel have gone on record in the hope of avoiding any parole violation problem. His rehabilitation has been disrupted and his family's lives torn apart.

The legal authorities cited by the respondents do not in any way contradict our authorities or position as stated in this case. Those cases stand for four totally inapplicable theories:

- (1) that the courts will not review a denial of parole except under the most limited circumstances;
- (2) that there is no Eighth Amendment right to bail for a parolee threatened with revocation;

- (3) that a court will generally not grant bail to a parolee reincarcerated on another criminal charge or on a post-conviction collateral attack;
- (4) that New York State lacks an appropriate vehicle to admit alleged parole violators to bail.

We are not attacking incarceration directly based upon a criminal conviction. We are assailing the total procedure employed herein, a procedure improper for all the reasons set forth in these affidavits. There is no threat of flight or harm to the community should Galante be released. No state or federal interest can be served by petitioner's continued incarceration. We submit that the respondents' inquiry to the Court has been answered:

MR. SUDLER: Your Honor, for the record, I do want to make one statement clear and that is not that the Court does not have jurisdiction under a writ of habeas corpus to grant bail, your Honor, although there has been no constitutional right to grant it.

I wanted simply to say that in the circumstances of this case we believe the Court is without power at this time because the Parole Commission has not acted nor has Mr. Rosen detailed how Mr. Galante's due process rights have been violated.

Which I wish, your Honor, by Friday Mr. Rosen would do that and he should say how the process is broken." (Transcript, October 11, 1977, page 21.)

WHEREFORE, it is respectfully requested that a writ of
habeas corpus issue from this Court and that petitioner be
admitted to reasonable bail.

Roy M Cohn

ROY M. COHN

Sworn to before me this

13th day of October, 1977

Ronald F. Poepplein

RONALD F. POEPPLEIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 30-4503069
Qualified in Nassau County
Commission Expires March 30, 1978

AFFIDAVIT OF MICHAEL ROSEN, ESQ., IN REPLY, OCTOBER 13, 1977 42A
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CARMINE GALANTE,

Petitioner,

- against -

THE WARDEN, METROPOLITAN CORREC-
TION CENTER and THE UNITED STATES
PAROLE COMMISSION,

Respondents.

:
: Index No. 77 CIV 4931
: (RJW)

: AFFIDAVIT IN REPLY

-----X
STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

MICHAEL ROSEN, being duly sworn, deposes and says:

I am a member of the firm SAXE, BACON & BOLAN, P.C. attorneys for the Petitioner, CARMINE GALANTE, and submit this affidavit in reply to the Respondents' papers in opposition to Petitioner's application for a Writ of Habeas Corpus and admission to reasonable bail.

Based upon the oral arguments heard by this Court on October 11, 1977, I am aware of this Court's concern for the issue of whether or not the Respondents have failed to accord petitioner due process in the commencement of the parole revocation proceeding. I will not burden this Court with a repetition of the events described in the accompanying affidavits of Roy M. Cohn and George Peter Lamb, Jr., as they relate to the due process issues. However, I would like to set forth before this Court further facts within my own personal knowledge, which I believe

Exhibit F-2

AFFIDAVIT OF MICHAEL ROSEN, ESQ., IN REPLY, OCTOBER 13, 1977 43A
substantiate our claim that the respondents failed to accord the
petitioner procedural due process in the commencing of these
proceedings.

On Saturday, October 8, 1971, I was present in this
Courthouse during the jury deliberations on another case - at
that time I was advised by Chief Assistant United States Attorney
William Tendy, that the parole revocation warrant for Mr. Galant
was not in his possession but in the hands of the Marshals. We
were not able to secure a copy of same that day. On Monday,
October 10, Mr. Tendy, in my presence, authorized Deputy Marshal
Stafford V. Pickett to allow me the opportunity to examine the
warrant, but not be given a copy of same. However, the warrant
could not be located in the Marshal's office.

On October 11, 1977, at 7:30 a.m. I surrendered Mr.
Galante to the United States Marshal. I received a copy of
the warrant and application at approximately 9:00 a.m. Shortly
thereafter, Probation Officer Joseph Loughran arrived in the
Marshal's office, requested a private room and announced that
he was ready for the preliminary interview. In the locked room,
I stated to Mr. Loughran that the petitioner denied all charges
that he had violated his parole, but Mr. Loughran insisted that
Galante had to respond specifically to each allegation. I told
Mr. Loughran that I had not had an adequate opportunity to discuss
analyze and investigate the allegations having just previously
been furnished with them. I asked Mr. Loughran if he would con-
sider restoring petitioner to freedom, but he stated that it was
up to the District Court, or the Parole Commissioner. I then

requested discovery pursuant to 28 C.F.R. §2.48 of the regulation but Mr. Loughran stated that he was not familiar with such a request, but that he would check it out. I then authorized Petitioner to sign an adjournment request form with a specific provision that the adjournment was requested due to the fact that I did not have adequate opportunity to consider the specific charges in the warrant application. At 1:45 p.m. Mr. Loughran advised me outside the Courtroom that I would receive nothing at that time relative to my discovery request but that certain reports would be given to the petitioner at the time of the preliminary hearing.

As is indicated in the accompanying affidavit of Roy M. Cohn, regular communication was maintained with the Probation Department concerning Mr. Galante's activities. In response to the January 11, 1977 letter to Probation Officer Waters my office received a letter dated January 20, 1977, stating that no action would be taken, based upon newspaper series concerning petitioner.

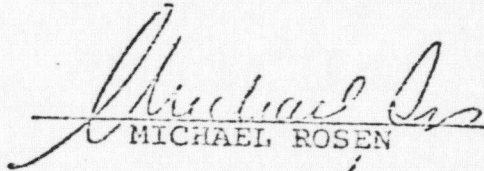
On May 10, 1977 I wrote to Probation Officer Joel Moss concerning a request by C.B.S. News regarding a story about petitioner.

On August 8, 1977, I wrote to Mr. Moss regarding the necessity for petitioner to travel to Florida. In a letter dated August 11, 1977, from Mr. Moss this permission was granted.

At no time was there any indication from Mr. Waters or Mr. Moss that a problem existed concerning Mr. Galante's parole. On the contrary, in telephone calls to Mr. Moss, I received the impression that nothing unusual was happening. The chronology of events set forth herein demonstrates a consistent pattern of

cooperation by the petitioner and his lawyers with the probation
AFFIDAVIT OF MICHAEL ROSEN, ESQ., IN REPLY, OCTOBER 13, 1977 45A
authorities. Unquestionably I submit, it substantiates our
position that there was no reason to issue a warrant requiring
Mr. Galante's arrest. His movements were known to the Probation
Department. His counsel was always available and repeated offers
of cooperation with his probation officers were made. We submit
that in light of these indisputable facts, the decision to issue
a warrant rather than a summons, and thus cause Mr. Galante's
arrest and incarceration, was an abuse of discretion, and was
arbitrary and capricious.

WHEREFORE, it is respectfully requested that a Writ of
Habeas Corpus issue from this Court, and that the petitioner be
admitted to reasonable bail.


MICHAEL ROSEN

Sworn to before me
this 13th day of October, 1977



RONALD F. POEPPLEIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 30-4003069
Qualified in Nassau County
Commission Expires March 30, 1979

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CARMINE GALANTE,

Petitioner,

- against -

THE WARDEN, MANHATTAN CORRECTIONAL
CENTER and THE UNITED STATES PAROLE
COMMISSION,

Respondents.
-----X

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Index No. 77 Civ. 4931
(RJW)

AFFIDAVIT IN REPLY

STATE OF NEW YORK)

) SS.:

COUNTY OF NEW YORK)

GEORGE PETER LAMB, JR., being duly sworn, deposes and
says:

I am of counsel to the firm of Saxe, Bacon & Bolan,
P.C., attorneys for petitioner, Carmine Galante, and submit this
affidavit in reply to the opposing papers submitted by the
respondents on the issue of admitting the petitioner to bail.

I have been an attorney admitted to the practice of law
for 14 years. I am admitted to practice before the United States
Supreme Court, Court of Appeals for the District of Columbia
Circuit, the Fourth Circuit Court of Appeals, the Tenth Circuit
Court of Appeals and District of Columbia Court of Appeals, as well
as the United States District Court for the District of Columbia.
For approximately the past ten years I have specialized in parole
litigation, representing individuals convicted of federal offenses
before the United States Parole Board, now the United States

EXHIBIT F-3

Parole Commission, and federal courts in parole related matters. In conjunction with this, I have been in constant communication with the Commission and am fully familiar with the statutes, rules and regulations applicable to parole as well as their operation and application.

The initial inquiry here must be the distinction between the determination of the United States Parole Commission to employ the warrant procedure rather than summons as provided for in 28 C.F.R. §2.44. I have read the affidavit of Mr. Kuznesof, Chief United States Parole Officer of the Southern District of New York, sworn to the 12th day of October, 1977. Mr. Kuznesof somewhat misleads this Court in stating that since his employment with the Parole Department in February of 1951, the Parole Board has never used a summons rather than a warrant to commence parole revocation proceedings. The Court must take note of the fact that it was not until March of 1976 that the Congress invited the summons procedure (PL 94-233). In fact, as will be demonstrated below, the instant situation is precisely the circumstances in which Congress intended that the summons procedure be employed.

As a result of frequent challenges in the federal courts to the parole procedure up through and including February, 1976, it became apparent to the Congress that a need for a complete overhaul and codification of the rules and regulations governing the United States Parole Board was required. Extensive hearings were had in Congress which resulted in the recodification of the

entire United States Parole system in the passage of Public Law 94-233, March 15, 1976. The Act itself provides (18 U.S.C. 4213)

"If any parolee is alleged to have violated his parole, the Commission may-

"(1) summon such parolee to appear at a hearing conducted pursuant to section 4212; or

"(2) issue a warrant and retake the parolee as provided in this section."

The adoption of this provision was at the time considered by traditionalists in the Department of Justice as a significant departure from established practice. It is important to note that in the conference report on the "Parole Commission and Reorganization Act, Report 94-838, 94th Congress, Second Session," the Conference Committee states as follows at page 33:

"This section provides that the Commission may initiate revocation proceedings using either a summons or a warrant procedure. It is the intent of the Conferees that the Commission should minimize the disruption of the parolee's life in any revocation proceeding. One means by which this intent has been implemented in giving the Commission discretion to use either a summons or warrant when a condition of parole has alleged to have been violated. However, the Conferees recognize that use of a summons for parolees with prior adult or juvenile records may simply be inappropriate."

This legislation clearly indicates that the summons procedure was established for a situation such as the instant case wherein (1) the parolee is not charged with any crime, nor has he been convicted of a crime subsequent to the granting of parole; (2) there is no potential for flight, as can be seen from

the accompanying affidavits of petitioner's counsel, wherein an unbroken four year record of diligent and constant contact and assistance is exhibited. In fact, I am advised that the petitioner's consciousness of the regulations is so great that within the past month in order to merely travel to the New Jersey Meadowlands just across the river to observe a football game, his counsel requested and received the necessary permission of his probation officer. Furthermore, as is demonstrated by the annexed letters of Roy M. Cohn, Esq., counsel to the petitioner, he has consistently offered immediate assistance to the United States Probation Office to explain any questions which may have arisen as to petitioner's conduct.

The government papers tend to mislead this Court as to the nature of a preliminary interview. They would have this Court believe that such a proceeding is rapid and summary, with the potential of immediate release by the interviewing officer pending resolution of the allegations. This is not a fact. Once the preliminary interview is commenced, the petitioner is entitled pursuant to 18 U.S.C. §4212(a)(2)(d) as promulgated by the regulations at 28 C.F.R. §2.48(b), to the production of witnesses to the alleged incidents. Even at the conclusion of the preliminary interview the interviewing officer has no authority to release the petitioner pending a revocation hearing. Assuming he determines that there is probable cause to sustain the allegation he may only recommend to the Regional Commissioner that the parolee

be released pending the revocation hearing. This recommendation is forwarded to the Regional Officer of the Commission and reviewed by staff. Once reviewed, the administrative hearing examiner forwards the recommendations to the Regional Commissioner for final determination.

It should be noted that prerogatives relative to parole revocation and rules on supervision cannot be delegated by the Commission. Under normal circumstances this review and determination by the Regional Commissioner would require from five to ten days before a decision is transmitted to the interviewing officer and to the parolee. I submit that even incarceration for five to ten days after a preliminary interview is concluded is improper where a parolee, such as the petitioner, is not accused of any criminal act while on parole.

The procedure whereby a revocation warrant is secured and served is as follows. In the instant case the affidavit of Mr. Kuzensof reports that on five separate occasions requests were forwarded to the Regional Commissioner in Philadelphia in an attempt to secure a violator warrant. Only after evaluation by the Commission analysts, administrative hearing examiner and ultimately the Regional Commissioner, Joseph A. Nardoza, was the warrant issued. In this case it is alleged that consideration was given to the possibility of issuing a summons, but after deliberation was rejected. Once the decision is made by the Regional Commissioner, it is believed that the decision is teletyped to the United States Marshal's office and the requesting

probation officer. It is important to note that 28 C.F.R. §2.44 states:

"A summons or warrant shall be considered issued when signed and placed in the mail at the Commission headquarters or appropriate regional office."

As evidenced by the Kuznesof affidavit, the warrant was issued on October 5 and was placed in the mail. The actual warrant was not received by the United States Marshal's office until October 7. Nonetheless the existence of the warrant was leaked to the press before it was received by the authorities in New York.

Subsequent to being retained as of counsel, I attempted to contact Parole Commission headquarters in Washington and the regional office in Philadelphia on October 10, without success. On October 11 I telephoned the regional office in Philadelphia and spoke with an analyst, Mr. Connor, who would not discuss any aspects of the Galantè matter due to the lack of a waiver of the Freedom of Information-Privacy Act. I then called the headquarters and spoke with associate counsel Michael Stover, requesting that he urge Mr. Nardoza, Regional Commissioner, to reconsider his decision to proceed to revocation warrant and to withdraw the warrant and issue a summons in its stead. Mr. Stover, after consulting with the regional office, apparently with Frank Johnson, Chief Administrative Hearing Examiner, returned my call and indicated that the decision to proceed with the warrant still stood.

Mr. Stover confirmed that under the rules of the Commission, consideration of the return to supervision pending further hearing would not occur until the conclusion of the preliminary interview, forwarding by the interviewing officer to the regional commissioner of his recommendation relative to probable cause and return to supervision.

It has been suggested by Assistant United States Attorney Sudler that the parolee has failed to exhaust his administrative remedies relative to the issue of "return to supervision" pending further proceedings. As stated in Mr. Kuznesof's affidavit, in the more than one year since the passage of PL 94-233 in spite of the statutory mandate "has never proceeded against a parolee or mandatory release by means of a summons". It would appear that in spite of his extensive experience, he is not cognizant of the new provisions of the law and acts in an arbitrary and capricious manner as agent for the Parole Commission in the retaking of alleged parole violators where neither an arrest, much less a conviction, is alleged. Inasmuch as the individual requesting the violator warrant, on no less than four occasions and those responsible for the ultimate decision in the North Eastern Regional Office of the Commission have never proceeded by summons, to make further requests would be a futile act. This is a demonstration of the Parole Commission's arbitrary and capricious action contrary to the Congressional mandate as set forth in PL 94-233 and the rules and regulations of the

United States Parole Commission as set forth in 28 C.F.R. §2.1 et seq. effective September 6, 1977.

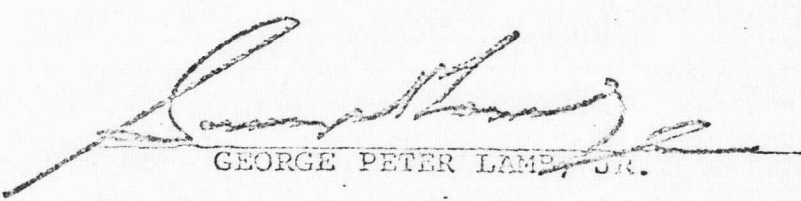
It should be noted that an extension of time of the preliminary interview of 30 days is permitted. After the preliminary interview the Regional Commissioner has 21 days from the date of the conclusion of the preliminary interview to decide probable cause. Following the finding of probable cause a local revocation hearing may be delayed by the Commission for up to 60 days following a probable cause determination. A determination by the Regional Commissioner to revoke may then be appealed to the Commission. The decision on appeal must be rendered 30 days from receipt thereof.

Due to the complexity of this case, the preliminary interview and local revocation hearing could each take days of testimony. Fair to say, without bail by this Court, the time of expectation prior to final determination by the Commission could exceed four months, during which, based upon my extensive experience, the parolee will remain incarcerated, even if successful. 28 C.F.R. §2.48(d)(2), §2.49(d) and §2.54(c).

Finally, it is clear that the United States Probation Office and the Parole Commission itself are misguided in their understanding of the function of the parole interviewer, both by statute as previously cited, and regulation the parolee has an opportunity to be provided with information upon which the revocation is based, granted an opportunity to prepare for such a

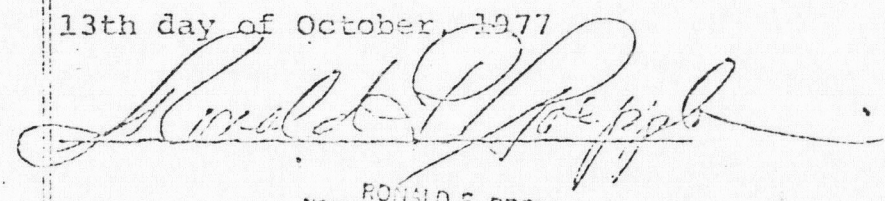
hearing, to subpoena witnesses and documents in aid of his defense with the assistance of counsel. In this case, where it is alleged through more than one year of surveillance many dates and locations, to adequately prepare a defense will take time on the part of the parolee, his counsel and the Commission. Under the rules Mr. Galante would remain incarcerated pending final determination but for action by this Court.

It is clear the petitioner asserts a "protect liberty interest" such as is protected by due process. Under these circumstances, his freedom, pending the final determination by the Commission to revoke is appropriate and required.


GEORGE PETER LAMB, JR.

Sworn to before me this

13th day of October, 1977


RONALD F. POEPPLEIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 37-4103039
Queens County
Commission Expires March 30, 1979

Will
*Same, Bacon & Bolan, P.C.*39 EAST 68TH STREET
NEW YORK, NEW YORK 10021JOHN GODFREY SAXE(1903-1953)
ROGERS H. BACON(1910-1962)(212) 472-1400
CABLE: SAKUMTHOMAS A. BOLAN
COUNSELROY M. COHN
DANIEL J. DRISCOLL
MICHAEL ROSEN
JOHN F. LANG
JAMES M. PECK
ROY R. KULCSAR
JEFFREY A. SHUMAN
RONALD F. POEPPLEIN
EDWARD H. HELLER

January 11, 1977

BY HAND

*Mr. Warner W. Waters*Probation Department
United States Courthouse
Foley Square
New York, New York 10007Re: Carmine Galante

Dear Mr.

As your records will indicate, we represent Carmine Galante, and have been in contact with your office since his parole in connection with a few details that required attention, and we received courteous and cooperative treatment.

We are writing now to see what if anything we can do with reference to recent publicity concerning Mr. Galante, which our investigation discloses has no basis in fact. It seems to us that it must stem from certain government sources, which are inaccurate, and totally inconsiderate of the rights of those they choose to smear in order to promote some publicity.

It is difficult if not impossible for Mr. Galante to protect himself against this kind of unfairness, and he is deeply upset about this. From all of our indications, he has been performing as required, and has done his best to abide by your requirements. If you ever have any indication to the contrary, this is to advise you that our firm is at your service in clarifying and correcting any situation you feel might require such. That is Mr. Galante's desire.

Re: Diakon & Dinning, P.C.

LETTERS ANNEXED TO REPLY AFFIDAVITS

56A

January 11, 1977
Page Two

We wonder if a meeting at your office might not be appropriate to discuss this matter further, and would appreciate such an opportunity. We will call for an appointment.

We thank you for your courtesy in this matter.

Sincerely,

Roy M. Cohn

sb

*Saxe, Bacon & Bolan, P.C.*39 EAST 69TH STREET
NEW YORK, NEW YORK 10021JOHN COFFEY SAXE (0000-1953)
ROBERT H. BACON (0010-1383)(212) 472-1400
CABLE: SAXONTHOMAS A. BOLAN
COUNSELROY M. COHN
DANIEL J. GRISCOLL
MICHAEL ROSEN
JOHN F. LANG
JAMES M. PECK
ROY R. KULCSAR
JEFFREY A. SHUMAN
RONALD F. POEPPLEIN
EDWARD H. HELLER

March 4, 1977

BY HAND

Mr. Warner W. Waters
Probation Department
United States Courthouse
Foley Square
New York, New York 10007Re: Carmin Galante

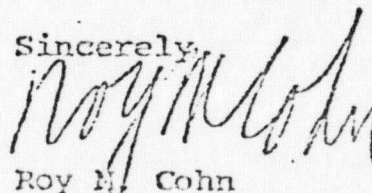
Dear Mr. Waters:

Further my letter of January 11, 1977, I wish to again advise you of Mr. Galante's distress of the recent and continued publicity which we feel is totally without fact or foundation.

We are enclosing herewith a copy of an item which appeared in the New York Post earlier this week, which apparently serves to explain the background of the publicity. This article makes it clear that the "facts" stem from old dead files maintained by the government and apparently the publicity was placed to create the impression that these governmental agencies are presently investigating Mr. Galante when, in fact, the publicity is being generated to perpetuate the various law enforcement agencies in their quest for appropriations.

Again we maintain as we did previously that we are available to you for any inquiries or conferences which you may deem appropriate and wish to offer our continued cooperation with respect to Mr. Galante's successful period of parole. Please do not hesitate to contact me for any reason.

Sincerely,



Roy M. Cohn

sb



Mob leaks

THE SPATE of inside-the-Mafia stories at the weekend has been explained away by the publications that ran them as pure journalistic endeavor, aimed at telling the public who's running the mob these days. But top mob-watchers are somewhat skeptical. The experts noted how much of all that was written happened to be in one 50-page federal Drug Enforcement Administration "confidential" report on Carmine Galante, the leading contender for "capo di tutti capi," the Godfather of all Godfathers.

These experts think the report was leaked to show how much the Unified Intelligence Division of the DEA knows about the underworld — a move to impress DEA brass in Washington, who have been taking a critical look at the UID lately. Much of what was told about Galante's new role had already been printed by The Post some four months back — before the DEA Dec. 8 report was compiled — when mob overlord Carlo Gambino died.

Show-biz bills

The all-girl group playing at Trade Heller's these weekends, Perry Sonders and the Step-Sisters, has Manhattan psychoanalyst Bernice Goodman for its manager. Miss Goodman says being a shrink is a big help being a rock manager . . . Peter Falk's new NBC contract gives him \$500,000 per for each of four new Columbo episodes . . . Lena Horne drawing \$500,000 at Westbury.

*Saxe, Bacon & Bolan, P.C.*39 EAST 68TH STREET
NEW YORK, NEW YORK 10021JOHN GODFREY SAXE (1909-1963)
ROGER B. BACON (1919-1962)(212) 472-1600
CABLE SAKBIMTHOMAS A. BOLAN
COUNSELROY M. COHN
DANIEL J. DRISCOLL
MICHAEL ROSEN
JOHN F. LANG
JAMES M. PECK
ROY R. KULCSAR
JEFFREY A. SHUMAN
RONALD F. POEPPLEIN
EDWARD H. HELLER

10, 1977

Mr. Joel Moss
United States Probation Department
United States Courthouse
Foley Square
New York, New York 10007Re: Carmine Galante

Dear Mr. Moss:

As I am sure you are aware, we represent Carmine Galante. Mr. Galante has been the subject of a recent media blitz concerning which we wrote to you previously.

Now CBS News is preparing a television report as a follow-up to the newspaper and magazine stories. A copy of a letter from CBS to us is attached hereto.

We have chosen not to reply to said letter since we do not wish to perpetuate the continuing misrepresentations and fictitious inventions of the press. We are advising you of our actions to keep you up to date with the press' harassment of Mr. Galante.

Very truly yours,

SAXE, BACON & BOLAN, P.C.

Michael Rosen

sb
Encl.

CBS
NEWS

A Division of CBS Inc.
524 West 57 Street
New York, New York 10019
(212) 975-4371

LETTERS ANNEXED TO REPLY AFFIDAVITS

60A

Dear Mr. Cohn:

As I told you on the phone yesterday, we are preparing a television report as a follow-up to the big newspaper stories of last February 20 on Mr. Carmine Galente. As near as we can determine now, your firm represented him in some kind of an appeal action while he was in prison. We can find no evidence of any other representation since.

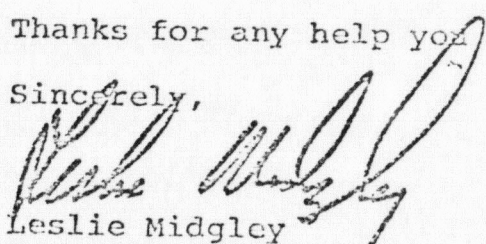
The report will be a segment on the Who's Who broadcast which is anchored by Dan Rather. Rather and I would, of course, like to ask Mr. Galente questions on camera. If this cannot be arranged, we would very much like to meet with him at any time or place.

You said one of your associates had represented him. I would greatly appreciate it if he could call me and see if we can make arrangements to get Mr. Galente's reaction to the stories about him.

CBS has now installed a centrix telephone system and my own office number is 975-2963.

Thanks for any help you can give us.

Sincerely,



Leslie Midgley
Executive Producer

Mr. Roy M. Cohn
39 East 68th St.
New York, N. Y.

April 21, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - AFFIDAVIT OF JOSEPH A. NARDOZA, OCTOBER 19, 1977

61A

CARMINE GALANTE,

:

Petitioner, :

-v-

:

AFFIDAVIT

THE WARDEN, METROPOLITAN
CORRECTIONAL CENTER,
UNITED STATES PAROLE COMMISSION,

:

77 Civ. 4931(RJW)

:

Respondents.: .

- - - - -x

STATE OF PENNSYLVANIA)
COUNTY OF DELAWARE : ss. :
EASTERN DISTRICT OF PENNSYLVANIA)

JOSEPH A. NARDOZA, being duly sworn, deposes and says:

1. I am the Commissioner for the Northeast Regional Office of the United States Parole Commission with offices at Scott Plaza 2, Industrial Highway, Philadelphia, Pennsylvania. In this position I am authorized by statute and regulation to issue parole and mandatory release violation warrants and summonses. This affidavit will set forth the deliberations involved in my decision to issue a warrant in the case of Carmine Galante, Register Number 30218-133.

2. On October 5, 1977, after reviewing documents furnished by the U.S. Probation Office, Southern District of New York, I determined that there was reliable information provided to the Commission that Mr. Galante had violated the conditions of his mandatory release relating to association with known criminals. The possible use of the summons procedure provided at 18 U.S.C. § 4213 was then thoroughly considered in this case. After consultations with the Administrative Hearing Examiner for the Northeast Regional Office of the Commission, with the Regional Attorney for the Northeast Office, and with a National Commissioner, I decided that use of a summons in Mr. Galante's case was inappropriate for the following reasons:

a. According to the Pre-Sentence Report dated July 9, 1962, Carmine Galante has a lengthy prior criminal record dating back to the 1920's. This record includes four prior adult convictions and two instances in which Mr. Galante was found to have violated conditions of prior parole releases, one of which was for associating with known criminals.

b. Based upon the information available to the Commission at this time, the alleged violations of mandatory release by Mr. Galante occurred frequently over the period of approximately one year. The number of these alleged violations and the repeated meetings with the persons involved is an indication that Mr. Galante's behavior, if proven, did not entail merely isolated incidents but revealed a continued pattern that is strongly suggestive of a course of conduct that could pose a threat to society. This is supported, in my view, by the fact that Mr. Galante's 1962 conviction was for conspiracy with 28 other persons to violate the narcotic laws.

3. The decision of whether a warrant, as opposed to a summons, should issue where there is reliable information that a parolee or mandatory releasee has violated the conditions of release is vested in the discretion of the issuing Commissioner pursuant to 18 U.S.C. § 4213(a); 28 C.F.R. § 2.44(a). Commission procedure provides that if, in the opinion of the Regional Commissioner, there are not sufficient grounds to hold an alleged violator in custody pending a revocation hearing, a summons for his appearance may be issued. In my view, the most relevant considerations in this determination are the prior record of the parolee and the frequency and seriousness of the alleged violations. In the short time in which this procedure has been authorized (since May 1976), the Commission has proceeded by summons in a number of cases in other regional offices. I had considered

using a summons in several cases in this region but I had rejected its use after evaluation of the particular facts of each case. In the case of Mr. Galante, because of his prior record and number of alleged violations as referenced above in Paragraph 2, I decided to proceed by warrant rather than by summons.

Joseph A. Nardoza

JOSEPH A. NARDOZA
Regional Commissioner
U.S. Parole Commission
Philadelphia, Pennsylvania

Sworn to and subscribed to before
me this 19th day of October 1977

Rosanne Christinio

NOTARY PUBLIC
ROSANNE CHRISTINIO, Notary Public
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
CARMINE GALANTE,

Petitioner,

Index No. 77 Civ. 4931
(RJW)

-against-

THE WARDEN, MANHATTAN CORRECTIONAL
CENTER and THE UNITED STATES PAROLE
COMMISSION,AFFIDAVITRespondents. :
-----X

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

MICHAEL ROSEN, being duly sworn, deposes and says:

I am a member of the firm of Saxe, Bacon & Bolan, P.C., attorneys for petitioner, Carmine Galante, and submit this affidavit in response to the affidavit of Joseph A. Nardoza, sworn to the 19th day of October, 1977 and in further support of the writ seeking bail for petitioner pending the revocation proceedings.

On October 18, 1977 the preliminary interview was commenced and completed before probation officer Joseph P. Hurley. Twenty-seven out of the original forty-five specifications (approx. 60%) were found to be without probable cause. A copy of Mr. Hurley's decision containing findings and recommendations is annexed hereto and made a part hereof. The interview produced shocking revelations which will be discussed below, revelations which go to the heart of the entire process which resulted in the revocation proceedings and the decision

to issue a warrant rather than to proceed by summons. These revelations demonstrate repeated instances of denial of due process. I respectfully submit that unusual circumstances exist for the Court's exercise of discretion in granting bail.

Mr. Nardoza's affidavit attempts to justify his decision not to proceed by summons but instead order the incarceration of Mr. Galante. It is respectfully submitted that Mr. Nardoza's reasons bear no rational relationship to the course he chose and, indeed, fly directly in the face of the regulations which he is bound to follow.

Mr. Nardoza's affidavit states (p. 3):

"In the case of Mr. Galante, because of his prior record and number of alleged violations . . . I decided to proceed by warrant rather than by summons."

"In my view, the most relevant considerations in this determination [freedom pending revocation hearing versus incarceration pending revocation hearing] are the prior record of the parolee and the frequency and seriousness of the alleged violations." (p. 2) (Emphasis added.)

THE PRIOR RECORD AS ONE CRITERIA

Title 28 CFR §2.48(e) (2) provides:

"Release notwithstanding probable cause:
If the Commission finds probable cause to believe that the parolee has violated the conditions of his release, reinstate-ment to supervision or release pending further proceeding may nonetheless be ordered if it is determined that:

(2) Incarceration pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations, and that the parolee is not likely to fail to appear for further proceedings and that the parolee does not constitute a danger to himself or others." (Emphasis added.)

Nowhere in the regulations pertaining to freedom or incarceration is there any criteria which permits consideration of a parolee's prior record.

The hearing officer specifically found that Mr. Galante poses no danger of flight or that he is a threat to the community. There is no rational basis to manufacture the non-existent criteria of "prior record" in determining whether or not to use a warrant. Granted, Mr. Galante has a criminal record. However, that fact cannot serve as a rational basis for depriving a man of his liberty after nearly four years of exemplary conduct as a parolee - after having paid his full debt to society - while he defends himself against contested allegations of parole violation.

Furthermore, reliance on a 15 year old pre-sentence report, which, at the time it was prepared, was not available to defense counsel for verification and challenge, appears to be grasping at straws when a decision as to a man's liberty is made in 1977.

Thus, it is submitted, the first criterion employed by Mr. Nardoza is irrational, unauthorized and clearly improper.

THE FREQUENCY OF ALLEGED
VIOLATIONS AS THE SECOND CRITERION

The warrant application which resulted in the arrest of Mr. Galante contained 45 specifications of alleged parole violations. Counsel having but a little over an hour locked in a U.S. Marshal's pen with Mr. Galante to review the discovery material supplied, was able to successfully contest and challenge 27 of the specifications at the preliminary interview. The hearing officer found no probable cause as to those 27 specifications and eliminated those charges.*

*Counsel and Mr. Galante's lack of mobility and lack of access to the outside world prevented the type of preparation which it is believed could have successfully challenged the remaining specifications.

Now that approximately 60% of the specifications have
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initially failed to stand up to challenge how can anyone point
to sheer numerical frequency as a criterion for Mr. Galante's
incarceration? Unfortunately it is impossible for us to argue
that Mr. Galante is now entitled to 60% of his freedom. One
is either in jail or out of jail. Mr. Galante has spent two
weeks in jail so far.

We respectfully submit that Mr. Nardoza's "frequency"
argument is now out of this case.

THE SERIOUSNESS OF THE ALLEGED
VIOLATIONS AS A THIRD CRITERION

The eleven conditions of release are set forth at
§2.40(a) of Title 28, CFR. When these conditions are studied
objectively as to relative "seriousness," the non-association
condition (#10) could not rank high on the list. It is submitted
that breach of the following are much more "serious":

- #5. Parolee shall make a truthful monthly report;
- #6. Parolee shall not violate any law, nor associate
with persons engaged in criminal activity;
- #9. Parolee shall not drink to excess or use drugs;
- #11. Parolee shall not have firearms or other dangerous
weapons.

It is important to note that Mr. Galante is not charged with a
violation of any law nor associations with persons engaged in
criminal activity (#6).

We submit that Mr. Nardoza's decision to label the
instant allegations as "serious" relative to the other pro-
scribed conduct is a weak attempt to persuade this Court that
his decision to pull Mr. Galante off the street was rational and
fair. We submit that it was not.

It is necessary to repeat that the regulations permit
return to supervision or release even if probable cause is found.

Conviction of a federal or state law is prima facie probable
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cause (§2.48(f)), yet, release may be ordered if the §2.48(e)(2)
criteria are met.

Cited cases in which the District Court did order such
release pending resolution of the charges all involved the more
serious charges of alleged violations or established convictions
of a federal or state law. (Ciambrone v. U.S. Parole Commission,
E.D.N.Y. 77 Civ. 356, Neaher, J.; Beradelli v. Warden, M.C.C.,
S.D.N.Y. 77 Civ. 1792, Stewart, J.; U.S. v. Schrieber, 367 F.
Supp. 791, E.D.N.Y. 1973, Dooling, J.; Argro v. U.S., 505 F.2d
1374 (2d Cir. 1974).

The only outright provisions in the law mandating the
use of the warrant specifies that the failure to appear in
response to a summons "shall be grounds for issuance of a
warrant" (§2.44(e)). Concededly, no such situation exists here.
Not only was petitioner available to appear in response to a
summons, but his attorneys specifically volunteered total
cooperation and availability to clear up any alleged violations.

In summary of this point, it is submitted that Mr.
Nardoza's stated reasons for using the warrant procedure does
not pass muster under either the Constitution or the regulations.
Since it is now formally established that the summons procedure
has never been used in the vast Northeast region one is not
surprised that Mr. Nardoza flatly avoided answering this Court's
specific and probative question as to when the summons would
be deemed appropriate.

It is clear that this region, unlike others in the
country, has ritualistically ignored and disregarded the Con-
gressional intent in providing for use of the summons for stated
reasons, and has never proceeded by summons in a single case.
It is plain that this is exactly the category of case (no
conviction or even alleged law violation; no possibility of

appropriate procedure. No refutation or clarification of the
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use of summons in just such a case as this in other regions is
even offered to the Court by Mr. Nardoza's affidavit. With
weeks of liberty (a 67 year old man), with inability to freely
assist counsel, already improperly denied because of "frequency
of charges," how can it not be a due process question to have
denied bail when 60% of the one-category charge has collapsed
at a preliminary screening? - and the balance hanging by a
thread by a close reading of the hearing officer's report.

The record shows a denial of due process in failure
to follow Congressional summons procedure, and in failure to
explain why not in view of absence of criteria for it, in failure
to contrast with any case in which summons procedure was used,
and in light now of elimination of 60% of the allegations, after
only preliminary screening - all of which fit this case not only
into criteria of summons procedure, but way beyond minimum
requirements for release by a District Court by Judges Dooling
(Schrieber), Stewart (Beradelli) and Neaher (Ciambrone), from
none of which an appeal was taken or attempted.

THE PRESENT POSTURE OF THE PROCEEDINGS

We urge the Court to fix reasonable bail so as to
restore petitioner to supervision and liberty pending the final
revocation hearing, which is apparently at least 81 days away.
It is submitted that the entire procedure culminating in the
decisions to revoke and employ the warrant is so tainted with
irregularities and improprieties that there exists a total denial
of due process and presents the Court with the unusual circum-
stances that would satisfy Argro.

Testimony at the preliminary interview, besides com-
pelling dismissal of 27 of the charges, revealed that:

(1) Members of the United States Attorney's Office
urged action by the Southern District Probation Department to

"do something" about Mr. Galante after the appearance of stories in the press. Indeed, the testimony established that one of the highest ranking members of the United States Attorney's Office, Chief Assistant William Tendy, attended a meeting with members of the Probation Department, and while holding aloft newspaper stories about Mr. Galante, jumped up and down imploring, "What are you going to do about this."

Mr. Tendy had prosecuted Mr. Galante and has taken an interest over the years in Galante's affairs. Clearly this was the genesis of the move to take Mr. Galante off the street. This pressure by the prosecutors on the Probation Department, which resulted ultimately in Mr. Galante's arrest was an unauthorized interference with the functioning of the Probation Department and resulted in a denial of due process to Mr. Galante. The decision to arrest was clearly not made in an impartial and detached atmosphere, as legally required. The essence of the parole system is its removal from and total independence of the adversary urgings of the prosecutorial arm. This unusual circumstance is one which deserves this Court's most careful scrutiny.

(2) Requests for "immediate issuance" of the warrant were made by those who were not aware of the summons procedure instituted in 1976. Probation Officer Joel Moss admitted that at the time he was requesting the issuance of the warrant he was not aware of the 1976 provision for the alternative summons. Thus it is clear that the Probation Officer who was responsible for Mr. Galante's supervision, who was investigating potential violations and who, in each of his five written "reports" to Mr. Nardoza, urged the issuance of a warrant* did not consider the issuance of a summons because he didn't know such procedure

* Mr. Moss's letters of August 15, September 9, September 19, September 26 and September 28, 1976.

existed at the time. Can anyone seriously argue that the question of issuance of a summons was fairly considered? What more unusual circumstance can exist that this situation?

(3) Probation Officer Moss's letter to Mr. Nardoza dated September 9, 1977 stated the following:

"As matters presently stand it is our understanding that the [Parole] Commission has declined to act on Southern District of New York's request for a violation warrant pending the receipt of additional, clarifying information. Quite frankly, we stand convinced that the immediate issuance of a warrant is merited. In substantiation of our request for immediate, affirmative action we offer the following:

(a) Upon making his initial report on January 25, 1974 Galante was apprised of the "Conditions of Parole" by the then assigned United States Probation Officer, James V. Gannon ... " (Emphasis supplied.)

Upon cross-examination Mr. Moss admitted that he never reviewed the mandatory release document with Mr. Galante* and only "assumed" that Mr. Gannon went over the conditions with Mr. Galante. Mr. Gannon, however, testified that his review with Mr. Galante of the latter's responsibilities on parole was limited to asking Mr. Galante if he had any questions, to which Mr. Galante replied that he wouldn't do anything to violate his parole.

Thus, Mr. Moss's critical representation to Mr. Nardoza that Mr. Galante was apprised of Condition #10 by himself and Mr. Gannon was factually inaccurate.** We submit that such a critical factual misrepresentation constitutes a very unusual circumstance and in itself was a denial of due process. Without notice as to the proscriptions of Condition #10, the

* See p. 13 of Hearing Officer's report.

** It was known that Mr. Galante did not sign his Mandatory Release papers upon release from prison on January 24, 1974.

incarceration of Mr. Galante for associating with individuals
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runs afoul of the First Amendment to the United States Constitution. This must also be viewed in light of counsel's letters to the Probation Department soliciting the opportunity to explain and clarify any alleged violations.

(4) Mr. Moss's September 26, 1977 letter to Mr. Nardoza is another shocking example of the disregard of Mr. Galante's rights. First, Mr. Moss transmits information concerning Mr. Galante's visit to a Mr. Provenzano in Dallas, Texas. This information was based on an erroneous F.B.I. report and was promptly dismissed by the hearing examiner. Then Mr. Moss characterizes a statement by Mr. Galante as follows:

"His statement smacks of arrogance more
so than fact." (p. 3.)

Mr. Moss, on cross-examination, admirably and candidly admitted that although his signature appears on the letter, the above-
quoted words were not his, but those of Supervising Probation Officer Luciano, who had no direct contact with Mr. Galante.
The intentionally erroneous characterization of Mr. Galante's attitude as arrogant was clearly inserted to prejudice Mr. Galante in the eyes of those who had the power to summarily deprive him of his freedom.

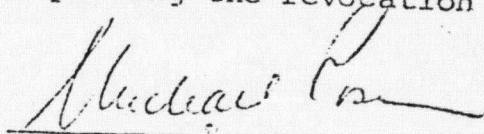
(5) More than half of the original 45 allegations revolve around a man without a criminal conviction. Thus, 23 specifications were summarily dropped by the hearing officer. Based on Mr. Nardoza's affidavit that the sheer numbers (he calls it "frequency") impressed him to go with the warrant, we submit that such recklessness demonstrates a procedural defect of Constitutional dimensions.

Obviously no pre-arrest verification of this fact was made by the Probation Department which recommended the warrant and the Parole Commission which rubber stamped that recommendation. This is also true of the Dallas

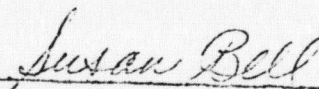
"meeting" which should have been verified. It must be noted that although the probable cause report omitted reference to several critical portions of the testimony, i.e., Mr. Moss's concession that the "arrogance" phrase was not his and the testimony by Mr. Gannon and Mr. Moss that they had not advised Mr. Galante of the conditions of his release, counsel is sure, that if called upon by the Court, the Hearing Officer would verify such testimony.

In summary, the five instances enumerated above constitute unusual circumstances and denials of due process far beyond those previously held to require admission to bail by the District Court.

It is submitted that upon all of the foregoing, Mr. Galante should be granted bail pending the revocation proceedings.


MICHAEL ROSEN

Sworn to before me this
26th day of October, 1977


SUSAN BELL
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-4097703 New York County 79
Commission Expires March 30, 1979

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
PROBATION OFFICE

MORRIS KUZNESOF
CHIEF PROBATION OFFICER

207 U. S. COURTHOUSE
FOLEY SQUARE
NEW YORK, N. Y. 10007
212-751-0003
61205-JPH

SUMMARY REPORT OF PRELIMINARY INTERVIEW

NAME: CARMINE GALANTE

DATE OF INTERVIEW: 10/18/77

REGISTER NUMBER: 30218-133

PLACE OF INTERVIEW:
U. S. Courthouse
(Probation Office)

TYPE OF RELEASE: Mandatory Release

DATE WARRANT ISSUED: 10/5/77

INTERVIEWING OFFICER:
Joseph P. Hurley

I. Mr. Carmine Galante, accompanied by his attorney, Mr. Michael Rosen, surrendered to the U. S. Marshal's Office in the Southern District of New York on 10/11/77.

The U. S. Probation Office in the Southern District of New York, contacted Mr. Galante on the same date of his surrender, 10/11/77, in order to conduct the Preliminary Interview in this matter. The alleged violator of mandatory release, through his attorney, Mr. Rosen, indicated that they wished to delay the Preliminary Interview so that they could read the charges that had been leveled against Mr. Galante and prepare a proper response. A new date of 10/18/77 was eventually agreed upon for the conducting of this interview.

II. The interview was conducted by U. S. Probation Officer Joseph Hurley. Since a large amount of material was to be distributed and reviewed at this interview, Mr. Hurley was assisted by U. S. Probation Officer Joseph Loughran. It should be pointed out that Mr. Loughran was not in any way involved in the determination of probable cause which is the purpose of the Preliminary Interview.

Mr. Galante was present and accompanied by his two attorneys, Mr. Michael Rosen and Mr. Peter Lamb.

Mr. Galante requested, at this time, that his present probation officer, Mr. Joel Moss, be present at the appropriate time for testimony, as well as all his former U. S. Probation Officers which have supervised him during his mandatory release period.

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Mr. James Gannon and Mr. Charles Prince were informed that their testimony would be required later in the day but Mr. Warner Waters was not able to be contacted due to an illness. All of the requested people are still on staff in some capacity to the court services in the Southern District of New York.

At the request of the Interviewing Officer, U. S. Probation Officer Joseph Hurley, the following witnesses testified:

1. Thomas Dykeman - Detective N.Y.P.D. assigned to the Organized Crime Monitoring Unit in New York City.
2. Nick Cutrone - Detective, Suffolk County Police Department of New York State.
3. Frank Spero - Special Agent of the Federal Bureau of Investigation located in the New York Office.
4. Michael P. Warren - Special Agent of the Federal Bureau of Investigation in the Dallas, Texas Office.
5. Robert Kukla - Investigator, New York State Police attached to the Tri-Agency Drug Task Force in New York City.
6. Alexander Rock - Investigator, New York State Police attached to the Tri-Agency Task Force in New York City.

It should be noted that U. S. Marshal McCauley, Badge 1704, of the Southern District of New York, was in the room during this interview since he technically had custody of Mr. Galante when Mr. Galante was brought from the Metropolitan Correctional Center to the Courthouse for this Preliminary Interview.

It should be noted that at this time the attorneys for Mr. Galante requested that a stenographer be present but the Interviewing Officer had been informed earlier in the morning that this was a closed hearing and that the U. S. Parole Commission did not want a stenographer at this particular interview. The request was denied but it has been properly noted.

III. REVIEW OF CHARGES:

For the purpose of clarity, this officer will state the one general charge as listed on the Warrant Application and review each in-

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stance of this general charge as it is listed on the application.

ASSOCIATION WITH PERSONS WHO HAVE A CRIMINAL RECORD WITHOUT PERMISSION OF USPO.

Since September 4, 1976, Subject has been associated with the following persons who have criminal records, according to U. S. Probation Officer Moss' reports of August 15, 1977, September 9, 1977, September 19, 1977, September 26, 1977 and September 30, 1977, with attachments:

- (a) Anthony DiPalermo - 10/20/76 Cafe Espresso, 242 Mott St., NYCPD did surveillance.

Mr. Galante, through his attorney, Mr. Rosen, has indicated that he will deny all charges at this time and make no further statements concerning his admittance or denial further on in this interview. They will present no witnesses other than the U. S. Probation Officers who have been requested to report but reserve the right to call other witnesses at a full revocation hearing if such a hearing is deemed warranted.

Adverse witness to this specific Surveillance: Detective Thomas Dykeman of the NYPD, indicated that he observed Mr. Galante driving an automobile, License Plate No. 326 DMG, and stop at the location listed above and talk for one minute with Mr. Anthony DiPalermo. The detective indicated that he could identify both subjects from prior photographs and surveillances that he had been involved with. He did not overhear any of the conversation that took place at this time. According to the detective, Mr. Galante drove off after one minute.

- (b) Joseph (Joe Beck) DiPalermo --- 9/8/76 L&T Cleaners, 245 Elizabeth St., New York. NYPD Surveillance.

Adverse witness to this citing: Detective Thomas Dykeman testified that he observed the mandatory releasee involved in a 15 minute conversation with Joseph DiPalermo in front of the L. & T. Cleaners. He did not overhear what was said at this time.

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During the cross-examination of the witness it should be pointed out that Mr. Rosen, Mr. Galante's attorney, indicated that the cleaners was owned by Mr. Galante. He also was able to elicit from the detective that a number of people came in and out of the dry cleaning establishment all during that day. Since the detective did not see Mr. DiPalermo arrive, the attorney suggested that it could very well have been nothing more than Mr. DiPalermo bringing his clothes to the cleaners and meeting an old acquaintance. The detective indicated that he was able to identify both subjects because of prior surveillances and photographs.

- (c) Vito DeFillipo -- 6/11/77 1 Tulip Ave., Hampton Bays New York. DEA Surveillance.

Adverse witness to this citing: The Investigator, Robert Kukla of the New York State Police testified that he knew both men from prior photographs and surveillances. He then testified that he observed Mr. DeFillipo arrive as a passenger of an automobile at the above address at 11:10 A.M. The subject immediately went into the house. During this day, Mr. Carmine Galante and Mr. Vito DeFillipo were seen leaving the house and returning on a number of occasions but not in the company of one another. Both were apparently visiting a garden down the street. Both men however were often in the house together. The surveillance of the house ended at 6:00 P.M. with Mr. DeFillipo still at the address when the surveillance team left.

During cross-examination Mr. Rosen, Mr. Carmine Galante's attorney, pointed out that no contact was ever seen by the agents of the so-called two subjects together. It was also pointed out that this address is the legal residence of Mr. Galante's daughter, Nina, who often had houseguests as friends of the family.

- (d) Alphonse "Sonny Red" Indelicato -- 9/8/76
Elizabeth-Grand Streets, New York City; 9/21/76
Elizabeth-Grand Streets, New York City; 10/14/76
Grant Street between Elizabeth Street and the Bowery; 5/8/77 341 Grant St., New York City.
NYPD Surveillance.

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Adverse witnesses for these meetings:

Detective Dykeman, who has testified earlier that he is a member of the NYC Police Department and familiar with both men, Mr. Indelicato as well as Mr. Galante, from previous photographs and surveillances that he personally worked on. The detective testified that on 9/8/76 he saw Carmine Galante and Alphonse Indelicato walking on Grand Street toward Mulberry Street engaged in a conversation that lasted approximately ten minutes. The detective did not know what was said.

On 9/21/76, according to the same detective, a second meeting occurred at Elizabeth Street & Grand, in which Carmine Galante remained in an automobile and conducted a conversation for nine minutes with Mr. Indelicato.

On 10/14/77, Detective Dykeman testified that a ten minute conversation took place between Mr. Indelicato and Mr. Galante on Grand Street between Elizabeth and the Bowery in an automobile. The detective again did not overhear the conversation.

On 6/8/77, Detective Dykeman indicates that he witnessed a 13 minute conversation between Carmine Galante, Mr. Indelicato and an unknown third man who looked to be about 55 years of age. This took place in front of 341 Grand St. in New York City. Again the conversation was not overheard.

- (e) Joseph "Joe Skootch" Indelicato -- 9/4/76 1 Tulip Avenue, Hampton Bays, N. Y.; 9/6/76 1 Tulip Ave., Hampton Bays, N. Y.; 6/11/77 1 Tulip Ave., Hampton Bays, N. Y.; 6/12/77 Gurneys Inn, Old Montauk Highway, Long Island, N. Y. These surveillances were done by the Suffolk County Police Department and/or the DEA Surveillance Team.

Adverse witnesses for these meetings: Detective Cutrone testified that he witnessed Carmine Galante and Joseph Indelicato meet on 9/4/76. He indicated that he knew both men from photographs that he had previously seen as well as prior surveillances that he had been assigned to

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in the duty of his work. Specifically, both men were conversing with each other while playing a game of horseshoes. The exact length of time for these conversations was not able to be established.

For the alleged meeting of 9/6/76, that is listed above, no witness appeared at today's Preliminary Interview but a deposition was submitted by a retired police officer named Edward Mayer of the Suffolk County Police Department. He indicates that he saw Mr. Indelicato leave the residence of Carmine Galante and put luggage in a car and drive off with one Jimmy Galante.

Investigator Robert Kukla testified that at about 12 noon he saw one Joseph Indelicato exit from a car and go into the residence at 1 Tulip Avenue, Hampton Bays, N. Y. He recognized Mr. Indelicato from previous photographs. Mr. Indelicato brought in luggage from the car to the house. The investigator indicated that he stayed at the surveillance site until 6:00 P.M. when surveillance was concluded for the day. He testified that Mr. Carmine Galante was seen entering the house at approximately 1:50 P.M. and that as far as he observed, Mr. Indelicato was still in the house.

Alexander Rock, who is an investigator with the State Police, testified that he observed Carmine Galante and Joseph Indelicato leave the residence at 1 Tulip Avenue and get into different automobiles and drive to Gurneys Inn in Montauk, N. Y. During the one hour surveillance at this restaurant, Mr. Carmine Galante was seen talking with Mr. Indelicato in various conversations during the dinner. The table was arranged so that 22 people were sitting at it and it appeared to be a celebration of some kind. It has been determined at a later time that this was a birthday celebration for one of the people at the table.

- (f) Joseph Anthony "Flip" Macaluso; this entire entry on the Warrant Application was not discussed in any detail due to the fact that the

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criminal record of Mr. Macaluso has not been established as possessing any convictions. The attorneys requested that a ruling be made by this officer before any testimony was given and this officer ruled that the Preliminary Interview would involve no other testimony regarding this entry of the Warrant Application other than the criminal record. For purposes of this hearing this officer felt that without a conviction listed on the criminal record it would serve no purpose to go through the individual surveillances at this time. A judgment was made that no probable cause existed as to the specific charge listed on the Warrant Application.

- (g) Angelo "Little Moe" Presenzano -- 10/6/76 CaSaBella Restaurant, 127 A Mulberry Street and various other locations in New York City; 4/7/77 Room 5420, Baylor University Medical Center, Dallas, Texas; 6/9/77 River Bar, 117 South St., New York City; 6/11/77 1 Tulip Ave., Hampton Bays, Long Island; 6/12/77 1 Tulip Ave., Hampton Bays, Long Island and Gurneys Inn, Old Montauk Highway, Montauk, New York; 7/28/77 River Bar, 117 South St., New York City; 8/8/77 Bed Rock Bar, 1625 Bath Ave., Brooklyn, New York. These surveillances took place with the help of the NYC Police Department, the FBI and the DEA Administration.

Adverse witnesses: Special Agent Spero of the FBI indicated in his testimony that while on a physical surveillance of a section of Manhattan known as Little Italy, he observed Angelo Presenzano entering the CaSaBella at 3:25 P.M. on the above-mentioned date. At 3:34 P.M. he observed Mr. Presenzano and Mr. Galante walking from the vicinity of this restaurant. He did not see any one of them leave the restaurant. They both entered an automobile parked some feet away from the restaurant and he observed them together for six minutes before he lost sight of them driving away.

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Special Agent Warren of the Federal Bureau of Investigation in Dallas, Texas testified that he observed Mr. Galante and one man and three females enter the Baylor University Medical Center in Dallas, Texas. Mr. Galante's party approached the information desk and asked for some direction. It was later ascertained that they had asked for Mr. Presenzano's room. The group was observed going into an elevator and the elevator was marked in the up indication. During the cross-examination of Mr. Warren, Mr. Lamb, Mr. Galante's attorney, was able to elicit from the Special Agent that no one saw Mr. Galante enter into Mr. Presenzano's room. Nobody saw any conversation between Mr. Presenzano or Mr. Galante. Mr. Lamb also indicated that it is very possible hospital records will show Mr. Presenzano was not in his room at this time but was being x-rayed in another part of the hospital for the 50 minutes that Mr. Galante waited to visit with him. Mr. Lamb indicated that no visit actually took place. Special Agent Warren was unable to produce any countering information to this specific statement.

Detective Dykeman of the NYC Police Department testified that he observed Mr. Carmine Galante on 6/9/77 meet with Mr. Presenzano at 117 South Street in Manhattan. A two minute conversation took place with Mr. Presenzano after which Mr. Presenzano put a package in Mr. Galante's car trunk.

On 6/11/77, Investigator Kukla of the State Police testified that he saw Mr. Angelo Presenzano arrive at 1 Tulip Avenue, Hampton Bays, N. Y. in an automobile. Luggage was taken out of the car at this time by two other people after Mr. Presenzano had entered the residence. Mr. Kukla did not witness any conversation between Mr. Galante and Mr. Presenzano. Surveillance ended without Mr. Presenzano leaving the residence in his car. Some six hours and 50 minutes elapsed during this particular surveillance. On 6/12/77, Investigator Rock of the

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New York State Police who was working with the Drug Enforcement Administration, observed Mr. Carmine Galante and Mr. Presenzano leave the residence at 1 Tulip Avenue in Hampton Bays and drive off in different cars. After some time it was ascertained that the individuals involved had driven to the Gurneys Inn Restaurant in Montauk, Long Island. During this dinner, in which 22 people took place, the surveillance indicated that Mr. Galante and Mr. Presenzano had short discussions during the entire dinner.

On 7/28/77, according to Detective Dykeman of the NYC Police Department, a 3 minute conversation took place in front of the River Bar in New York City. The conversation was not overheard. During cross-examination by Mr. Galante's attorney, Mr. Dykeman did indicate that he had seen both individuals in that area at different times without meeting one another.

On 8/8/77, a 3 minute conversation took place between Carmine Galante and Mr. Presenzano as well as Jimmy Galante, as they were leaving the Bed Rock Bar. During cross-examination Mr. Galante's attorney, Mr. Rosen, commented that Mr. Presenzano manages the River Bar and Mr. Macaluso is sometimes employed as a bartender in this establishment. He suggests that all Mr. Galante would do for his friend, Mr. Macaluso would be to drive him to work or to pick him up from his day's employment.

- (h) Michael "Mickey" Zaffarano; 10/5/76 Horn & Hardart, 104 W. 57th St., New York; 28th St. & 5th Ave., New York, N. Y.; 3/22/77 Horn & Hardart, 104 W. 57th St., New York, N. Y.; West 49th St. & Park Ave., New York, N. Y.; 5/10/77 9 West 57th St., New York, N. Y.; 6/8/77 Horn & Hardart, 104 West 57th St., New York; 205 Knickerbocker Ave., Brooklyn, New York; 1600 Broadway, New York, N.Y.; 7/27/77 Horn & Hardart Restaurant, 104 W. 57th St., New York City; Inside Public Garage under 9 West 57th St., New York City; West 49th St., & 5th Avenue, New York, N. Y.; all of these surveillances took place through the NYC Police Department.

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Adverse witnesses: Detective Dykeman testified that on 10/5/76, at the Horn & Hardart Restaurant at 104 W. 57th Street, New York City, Mr. Carmine Galante and Mr. Michael Zaffarano spent some 15 minutes in discussion. After this conversation Mr. Galante left but a few moments later Mr. Zaffarano caught up with him and they continued their conversation for the next 2½ hours. This conversation was conducted when the two men were walking around the block and in a garage at 9 West 57th Street in Manhattan.

Detective Dykeman testified that on 3/22/77 a two hour conversation took place between the same two men at the Horn & Hardart Restaurant in New York City. Overheard in this conversation between Mr. Carmine Galante and Mr. Michael Zaffarano was Mr. Galante saying "if we could do it" and "if I asked him to do something" and "he's anxious to speak".

Detective Dykeman testified that on 5/10/77, at 9 West 57th Street, in an underground garage, the two men again met for about one hour. The two left the garage together and walked in conversation for about another 20 minutes.

Detective Dykeman also testified that on 6/8/77 at the Horn & Hardart Restaurant, Mr. Zaffarano met Mr. Galante and the two left the restaurant and proceeded by car to drive through Manhattan into Brooklyn over to 205 Knickerbocker Avenue in Brooklyn, New York. This drive lasted approximately 40 minutes. The subjects entered the restaurant at the address but were not observed inside. Both men left the restaurant after one hour and 20 minutes and Mr. Zaffarano carried a brown paper bag in which he placed in the trunk of Mr. Galante's car. Both men entered the automobile and drove to 1600 Broadway where Mr. Zaffarano left the car and left Mr. Galante.

On 7/27/77, Detective Dykeman indicates that he saw Mr. Zaffarano in conversation with Carmine Galante in the Horn & Hardart Restaurant. Both men left after one hour and walked to a garage

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on 9 West 57th Street. Mr. Galante was driving an automobile in which Mr. Zaffarano was a passenger, as they both left the garage. They drove to West 49th Street & 7th Avenue at such time Mr. Zaffarano left the automobile. Surveillance was discontinued.

OTHER ADMITTED VIOLATIONS:

Mr. Carmine Galante makes no statement or admittance of any other violations at this time.

IV. COMMUNITY RESOURCES:

If reinstated to mandatory release supervision at the present time, Mr. Galante lists his residence at 155 E. 38th Street, Apt. 20B, New York, N. Y., 10016. This apartment is registered to Ms. Antoinette Schwartz.

Mr. Galante indicates that he will support himself through a partnership in Armando's Pizzeria. Records indicate that Mr. Galante was earning between \$800 to \$1,000 a month. These records were specifically the monthly mail report which Mr. Galante returned to his probation officer each month. This place of employment is located at 1519 Kings Highway, Brooklyn, New York in a building that is owned by the New York City Transit Authority. Mr. Galante has been involved in this enterprise since January 1, 1977.

Mr. Rosen, Mr. Galante's attorney, indicates that Mr. Galante is a family man who would continue to lead a law abiding family oriented life if released under mandatory release supervision. He has indicated that there has been no criminal charges placed against Mr. Galante since his release from Federal custody in 1974 and that Mr. Galante would in no way be a parole risk.

V. WITNESSES INTERVIEWED:

Mr. Carmine Galante's attorneys requested that they be permitted to question any probation officer who supervised Mr. Galante during his release period. According to probation records, Mr. Galante was supervised by Mr. James Gannon, who has since become a supervisor in the Pretrial Service Agency in this Court, Mr. Warner Waters, who is presently a supervisor in the U. S. Probation Office of this Court, Mr. Charles Prince, who is a U. S. Probation Officer with the Court and Mr. Joel Moss, who presently is supervising Mr. Galante. All officers then are still part of the Southern District of New York Court

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Services. As indicated before, Mr. Waters, due to an illness was unable to testify at this hearing.

Mr. Gannon was first to testify. The questioning was essentially conducted by Mr. Rosen and Mr. Lamb, the attorneys for Mr. Galante. Mr. Gannon indicated that when Mr. Galante arrived for his initial interview, he signed his Notice of Arrival Document, but had refused to sign the mandatory release papers when he left the prison in Atlanta, Georgia. He then indicated to prison officials that he needed further counsel concerning this matter. Mr. Gannon indicated that during the supervision of Mr. Galante, Mr. Rosen, Mr. Galante's attorney, had contacted Mr. Gannon concerning the marital separation of Mr. Galante and his wife. At that time there was no question of any violations being committed by Mr. Galante. Mr. Rosen concluded the questioning of Mr. Gannon at this interview by soliciting from Mr. Gannon a general statement concerning Mr. Galante's adjustment under mandatory release supervision. Mr. Gannon indicated that to all appearance Mr. Galante was adhering to all the regulations of mandatory release. He also indicated that he had not found any evidence of violations by Mr. Galante nor had any agency given him any information concerning violations by Mr. Galante.

Mr. Charles Prince, the U. S. Probation Officer here in the Southern District of New York, was then questioned concerning the period of January 1976 to October 1976, when he was supervising Mr. Galante's mandatory release term. Mr. Prince indicated to the two attorneys that aside from isolated calls from the FBI and one call from a California State Police Detective there were no contacts from law enforcement agencies concerning Mr. Galante. When asked if Mr. Galante was a model parolee, Mr. Prince responded that while he would not say that anyone under parole or mandatory release supervision could be considered a model, he had no problems whatsoever with Mr. Galante. He also indicated that there was no policy rule, as far as he understood, that required him to contact law enforcement agencies on a regular basis. He of course would act if any violations were brought to his attention. The questioning concluded with Mr. Lamb asking Mr. Prince if he ever remembered Mr. Galante coming to the office with Mr. Macaluso. At first the probation officer could not remember, but when Mr. Galante himself spoke to Mr. Prince about the man called Flip and described the small stature of the man, Mr. Prince then did recall such a meeting. It should be pointed out that this Mr. Macaluso is mentioned in a large section of the Warrant Application as a person with a known criminal record who had associated with Mr. Galante. A later search of this criminal record by this office has indicated that no convictions of any kind have been established on Mr. Macaluso's record. The purpose of the attorneys

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in bringing this up was to show that Mr. Galante has always been open and honest with this office.

Mr. Warner Waters is supervisor here in the U. S. Probation Office of the Southern District of New York and was unable to testify due to a personal illness.

Mr. Joel Moss, who has supervised Mr. Galante from March 1977 to the present time, was questioned at length by the two attorneys for Mr. Galante. It was ascertained that Mr. Moss understood part of his role as a supervising probation officer to have contact with law enforcement agencies when violations were apparent or suspected. He did not solicit the initial contact with any agency but when contacted by the Suffolk County Police Department concerning information about a residence at 1 Tulip Avenue in Hampton Bays, he did follow up this call with a visit to the police department and a review of the material that the police requested him to see. After notes were taken from this material and after conferring with his supervisor, Mr. Michael Luciano, it was agreed to by Mr. Moss and his supervisor that further contact with the Suffolk County Police Department was warranted. If any violations were seen they should be brought to the attention of the U. S. Parole Commission.

Mr. Moss did admit that he never reviewed the mandatory release document with Mr. Galante. Mr. Moss also indicated that Mr. Rosen, Mr. Galante's attorney, did contact Mr. Moss to request that he be informed of any activities which were not in strict compliance with the mandatory release rules.

The attorneys then questioned Mr. Moss concerning his correspondence to the U. S. Parole Commission. Mr. Moss indicated that he contacted the Commission only after he felt violations were probable. He did admit that he followed up his initial contact with the U. S. Parole Commission with other letters, urging them to act on the material that he had provided them in previous correspondence. Mr. Moss also indicated he contacted the U. S. Parole Commission in person.

Mr. Moss was also questioned as to his contacts with the U. S. Attorney's Office in the Southern District of New York. There evidently was some contact concerning this whole matter. The nature of these contacts was not dealt into at this interview. It was ascertained that one Assistant U. S. Attorney, who had prosecuted Mr. Galante, had taken part in a conversation with Mr. Moss concerning this matter.

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Mr. Moss was finally questioned concerning his chronological entries of dictation in Mr. Galante's file. Part of Mr. Moss' record was made available to the attorneys for the purposes of this Preliminary Interview. Mr. Moss indicated that his reasoning for initial contact with the law enforcement agencies was only after they had contacted him about known criminals associating in a residence that appeared to be Mr. Galante's. As to the exact dates of these contacts, as well as the detailed history of the fruits of these contacts, Mr. Moss was only able to respond in generalities at this time but he did indicate he would be better prepared for complete answers if this were required of him. This appeared to be acceptable to all concerned for the purposes of this interview.

At this time, the two attorneys for Mr. Galante spoke in summation. They indicated that they believed all the contacts mentioned in the Warrant Application were of either a social nature involving normal family gatherings or of such a small frame of time that only a casual greeting could have taken place between known acquaintances. The attorneys did not address themselves to each individual instance as listed on the Warrant Application but did feel that a pattern existed of Mr. Galante merely meeting family and friends in casual unbusinesslike situations.

The two men indicated that Mr. Galante owned the L. & T. Cleaners on Elizabeth Street and to charge him with meeting people in front of a store that he owned appeared to be somewhat absurd when these meetings only were for fleeting moments.

They did show that Mr. Galante's meeting with Mr. Macaluso and Mr. Angelo Presenzano at the River Bar were explainable by the fact that Mr. Macaluso, who was a personal and close friend of Mr. Galante, was employed at the bar and would often be driven to and from there as any close friend would do. Mr. Macaluso, who worked as a bartender there, also is seen acting as an attendant for Mr. Galante when needed. They are very close personally and spend a considerable amount of time each day with one another.

Mr. Rosen pointed out that the house at 1 Tulip Avenue in Hampton Bays is owned not by Mr. Galante but by his daughter, Nina Galante. People who are friends of hers or who are married to friends of hers would often drop in there during the spring and

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summer season to enjoy the resort area's entertainment as well as to visit close friends. When Mr. Galante was viewed leaving this house for Gurneys Inn in Montauk on Long Island, Mr. Rosen points out that he was involved in a family social affair since it was a birthday celebration for the wife of Mr. Presenzano. They point out that the agents were able to testify to the fact that a celebration of some kind took place during the dinner.

In conclusion, they indicate that the surveillances never once showed any illegal activity by Mr. Galante or by any person that he associated with. According to Mr. Rosen, no one has been able to show anything in these contacts but the normal contacts of a family man, a business man and a human being.

VI. RECOMMENDATION AS TO PROBABLE CAUSE:

This officer will take each instance as listed on the Warrant Application and remark appropriately:

- (a) The meeting of Anthony DiPalermo on October 20, 1976 with Mr. Carmine Galante has shown no probable cause as to the charge made in this Warrant. It is believed that the time span was of such a short duration that nothing more than a greeting could have been possible. The time as indicated by the detective who made this surveillance was that the conversation lasted no more than one minute.
- (b) The meeting between Mr. Galante and Mr. Joseph DiPalermo on September 8, 1976, has shown probable cause as to the charge listed in this Warrant. The 15 minute time span that this conversation involved was with a man known to Mr. Galante from the neighborhood and more than a greeting certainly could have taken place over this 15 minute period.
- (c) The meeting between Mr. DeFillipo and Mr. Galante on June 11, 1977 has shown probable cause as regards to the charge in this Warrant. Although no one could testify that anyone saw Mr. DeFillipo hold a conversation with Mr. Galante, the long time span of at least eight hours in a house known to be a quasi residence of Mr. Galante and with being present for some time in the house together, leads to the judgment that it certainly is possible that association of an essential nature took place.

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- (d) The meetings between Alphonse "Sonny Red" Indelicato on September 8, 1976, September 21, 1976, October 14, 1976 and May 8, 1977, have all shown probable cause as to the charge specified in this Warrant. The length of time involved in these meetings showed more than just a casual greeting of a civil nature.
- (e) The meeting between Joseph Indelicato on September 4, 1976, at 1 Tulip Avenue, Hampton Bays, Long Island, New York, has shown probable cause. Both men were playing a social game of horseshoes but were seen talking together over the entire period of such a game. In this officer's judgment, simply surrounding a conversation with social activity does not indicate that nothing more than social activity did not take place. Certainly association as charged in the Warrant is there.

The meeting between Mr. Indelicato and Mr. Galante on September 6, 1976 at 1 Tulip Ave., Hampton Bays, shows no probable cause. Although a deposition by a police officer was able to establish the fact that Mr. Indelicato placed luggage in his car while leaving the residence of Mr. Galante, no one has been able to show any meeting took place. Further, no one was able to testify whether this particular day was an extension of Mr. Indelicato's visit from September 4, 1976 since surveillance was not continuous. Hence no probable cause on this particular charge.

Probable cause is found in the visit of Mr. Indelicato with Mr. Galante on June 11, 1977. This visit took place at 1 Tulip Avenue, Hampton Bays, Long Island, New York. Here it was felt that the length of time in the house, where both men were seen going into this house, is probable that they associated with one another while being inside.

Probable cause is found in the June 12, 1977 Gurneys Inn, Old Montauk Highway, association.

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Here again even though Mr. Indelicato and Mr. Galante were involved in a social setting, they did indeed have a conversation and that this particular meal lasted for at least one hour.

- (f) Joseph Anthony "Flip" Macaluso has listed a number of contacts with Mr. Galante. As indicated previously in this report, this officer has deemed all of these contacts at the present time to have no probable cause. It is felt that Mr. Macaluso's police record while showing some arrests, shows no convictions and for the purposes of this report, a criminal history has been understood to mean criminal convictions.
- (g) Probable cause is found in the meeting between Angelo "Little Moe" Presenzano and Mr. Carmine Galante on October 6, 1976 at the CaSaBella Restaurant in Manhattan. They were observed for at least six minutes, which is more than a normal social greeting would take. The alleged meeting of Mr. Presenzano and Mr. Galante on April 7, 1977 at the Baylor University Medical Center in Dallas, Texas shows no probable cause. No Federal agent or local law enforcement officer has been able to testify that they saw the two men together or that Mr. Galante even entered Mr. Presenzano's room. It further has been presented by the attorneys for Mr. Galante that Mr. Presenzano was not available for visits at that time since he was being x-rayed in another part of the hospital. While this has not been verified, the fact that the Federal agents who were on the surveillance team never saw the two subjects together would indicate at this time that a ruling of no probable cause is our judgment.

Probable cause is found in the meeting between Mr. Presenzano and Mr. Galante on June 9, 1977 at the River Bar on South Street in Manhattan. Although only three minutes were involved in this particular meeting, more than just a greeting took place in that a package was placed by Mr.

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Presenzano in the trunk of the car being driven by Mr. Galante.

The meeting between Mr. Presenzano and Mr. Galante on June 11, 1977 at 1 Tulip Avenue, Hampton Bays, Long Island, because of the length of time that existed during the period that these men both were in the residence, leads this officer to the conclusion that probable cause does exist that association did take place.

The meeting of June 12, 1977 between the same two men at 1 Tulip Avenue and again at Gurneys Inn would again indicate that because of the length of time as well as the fact that the men were seen talking together at Gurneys Inn, even though in a social situation, would certainly show that some association took place and we therefore rule for probable cause at both sites on this date.

The meeting of July 28, 1977 at the River Bar at 117 South Street shows no probable cause as to association of Mr. Presenzano with Mr. Galante. Our reason being that the duration was so short and that nothing more than conversation took place that nothing more than a greeting could very well have occurred.

The meeting of August 8, 1977 at the Bed Rock Bar, located at 1625 Bath Avenue, Brooklyn, New York, does show probable cause in that the group was seen leaving together from this place of business and it is reasonable to assume that something more than a greeting took place. The length of time in this particular instance does exceed the normal greeting.

- (h) The meetings between Mr. Michael "Mickey" Zaffarano on October 5, 1976, March 22, 1977, May 10, 1977, May 8, 1977 and July 27, 1977 all show probable cause to this officer in that they conducted over long periods of time. According to the surveillance reports, some of these meetings were conducted over more than two hours. Certainly more than a greeting was taking place

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and a very real association was visible to the surveilling officers.

This officer has been asked by Mr. Galante's attorneys to make a recommendation at the present time concerning a possible administrative release of Mr. Galante from incarceration until final adjudication of this matter can be had. The attorneys have indicated that Mr. Galante is not an absconder since in fact he surrendered on his own with his attorneys for these very proceedings. The attorneys also indicated that there has not been one instance of new criminal violation by Mr. Galante since he began his mandatory release supervision. With all the surveillance that has taken place, no criminal activity has been charged against Mr. Galante. Mr. Rosen points out that he is not a violent man who is a threat to the community and that since the adjudication of this matter could take a considerable amount of time, that administrative release be considered.

The undersigned officer recommends that Mr. Galante remain in custody pending further action by the Parole Commission. We are basing our decision on the clearly defined requirements of mandatory release supervision. It has been determined by this officer that probable cause does exist in this matter in that Mr. Galante has not complied with the conditions of mandatory release.

There was no indication during the Preliminary Interview to demonstrate to this officer that Mr. Galante has changed his mind in this matter. It is our considered opinion if this alleged violator is released his actions will show no significant change.

Oct 31, 1977
(DATE)

Joseph H. Hickey
(INTERVIEWING OFFICER)



COPY RECEIVED
ROBERT B. FISKE JR
NOV 10 1977
U. S. ATTORNEY
SO. DIST. OF N. Y.